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THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS:

THE HOST NATION'S DUTY TO ACCORD;

THE ORGANIZATION'S DUTY TO ENFORCE

A Thesis  
Presented to  
The Judge Advocate General's School  
United States Army

The opinions and conclusions expressed herein are those of the author and do not necessarily represent the views of either The Judge Advocate General's School, The United States Army, or any other governmental agency.

by Lieutenant-Colonel Margaret-Ann F. Macdonald

Canadian Forces

43rd JUDGE ADVOCATE OFFICER GRADUATE COURSE

April 1995

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**ABSTRACT:** This thesis examines the various privileges and immunities provisions upon which the United Nations Organization is entitled to rely, with respect to its presence in the territory of a Member State of the Organization. It examines these provisions in the context of the United Nations peace-keeping operation in the former Yugoslavia. It concludes that host nations are not meeting their obligations; and that the United Nations is not meeting its obligation to enforce the privileges and immunities to which it is entitled. This thesis argues that the United Nations Organization must enforce its privilege and immunity rights more vigorously; the Model Status of Forces Agreement adopted by the General Assembly in October 1990 must be rescinded; and steps must be taken to adopt a new more encompassing convention which will be a clear definition of host authority obligations in all circumstances, and will provide a mechanism for enforcing those obligations.

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THE PRIVILEGES AND IMMUNITIES OF THE UNITED NATIONS:

THE HOST NATION'S DUTY TO ACCORD;

THE ORGANIZATION'S DUTY TO ENFORCE

LIEUTENANT-COLONEL MARGARET-ANN F. MACDONALD\*

I. Introduction<sup>1</sup>

*The United Nations is a gathering of sovereign States and what it can do depends on the common ground that they create between them.*<sup>2</sup>

*Boutros Boutros-Ghali*

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A solid common ground, rooted in an entrenched understanding by all of their respective rights, responsibilities, and obligations is inherent to the achievement by the sovereign or Member States of their common goals. It is essential to the efficient and effective operations of the United Nations (UN) Organization.

Two ways in which a Member State exhibits its commitment to that common ground are: one, in meeting its financial obligations to the Organization; and, two, in affording the United Nations duly appropriate status when the Organization has a presence within its territory. The United Nations Organization is not a nation. It is a collective body of nations. As such, it does not have a sovereign territory. Wherever the United Nations may be from time to time, it will necessarily be the guest of a host territory or Member State of the Organization. Its presence may take the form of a permanent United Nations headquarters establishment, a United Nations peace-keeping operation,<sup>3</sup> a disaster relief operation, or may be of much shorter duration such as the hosting of a United Nations-sponsored conference. Host nations are asked to afford certain privileges and immunities to the United Nations Organization as a whole, to the officials of the Organization and to the various representatives of other Member States who shall in relation to the Organization have cause to be in the territory of the host.

For fifty years now, the United Nations Organization and Member States have been deploying persons to the sovereign territory of other nations. It has established headquarters at New York, United States of America, at Geneva, Switzerland, and at Vienna, Austria. It is present in many nations under the auspices of its humanitarian, education and development agencies, such as the Office of the United Nations High Commissioner for Refugees (UNHCR), the United Nations Educational, Scientific and Cultural Organization (UNESCO), and the United Nations Development Program (UNDP). Many military troops have been in the past and are presently in the territory of other Member States in furtherance of various United Nations military operations. As well, in mounting and supporting an operation in a particular host territory, the United Nations is often required to establish a presence in neighbouring states. These nations, because of their status as neighbouring states, are relied on heavily by the United Nations operation for administrative and logistical support. Kenya is an example in this regard, where Nairobi airport is being used extensively with respect to the United Nations operations in Africa, especially Rwanda and Somalia.

The legal status of the Organization and the individual persons associated therewith, while present on foreign soil is governed by the Charter of the United Nations<sup>4</sup> (Charter), and by the terms and conditions set out in the Convention on the



Privileges and Immunities of the United Nations adopted by the General Assembly of the United Nations on 13 February 1946<sup>5</sup> (1946 Convention). In a very small number of cases more comprehensive documents known as host nation agreements or status of forces agreements (SOFA) have been negotiated between the host authorities and the United Nations. The SOFA "provides for the international status of the U.N. and its general immunity from local jurisdiction. It seeks to provide an appropriate balance between the international mandate<sup>6</sup> given to the force and the sovereignty of the host State."<sup>7</sup> As well, over the years, in the context of peace-keeping operations, a number of practices and principles of peace-keeping have been established to accommodate situations which have not otherwise been provided for. Within the United Nations community, these have come to be known as *the established practices and principles* of peace-keeping. This thesis will focus on the Charter, the 1946 Convention and the Model SOFA.

On 8 December 1989, the United Nations General Assembly (GA) requested that the Secretary-General "prepare a model status-of-forces agreement between the United Nations and host countries, while maintaining the flexibility needed to encompass different possible operations, and to make the model agreement available to Member States ...."<sup>8</sup> The Secretary-General responded on 9 October 1990 with the Model Status of Forces Agreement,"<sup>9</sup> (Model SOFA). The Model SOFA sets out in more detail and with greater

certainty, than that which is provided in the Charter and the 1946 Convention, the terms and conditions under which the United Nations would countenance the deployment of United Nations peace-keeping or other operations to the territory of a host nation or authority. The Model SOFA was "intended to serve as a basis for the drafting of individual agreements to be concluded between the United Nations and countries on whose territory peace-keeping operations are deployed."<sup>10</sup> As such it was designed to be "subject to modifications that may be agreed upon between the parties in each case."<sup>11</sup> It was also intended that the model: "*mutatis mutandis*, will serve as the basis for an agreement with a host country in operations where no United Nations military personnel are deployed."<sup>12</sup> (That is to say, in operations where only civilians are deployed.) In addition, the Model SOFA anticipated agreements with states who were not party to the 1946 Convention<sup>13</sup> as well as with administrations having *de facto* authority over the territory of a particular United Nations operation.<sup>14</sup>

The concept of embodying the precepts of the Charter, the terms of the 1946 Convention, together with safeguards relative to the lessons learned over the years since 1945, in one document, was sound. But it is not working. Host authorities are not meeting their obligations. The United Nations is not enforcing its rights.

The failure of a host authority to meet its Charter, 1946 Convention and SOFA obligations on the one hand and the failure of the United Nations to enforce its rights visa-vis a host authority on the other, effect the United Nations Organization as a whole and the specific operation in particular. The effects on the United Nations Organization are many and varied. The most obvious effect is on the financial resources of the Organization. But there are also innumerable implications for the personnel involved. Can the United Nations afford to continue to deploy forces and personnel under the present circumstances? This thesis argues that it cannot.

This thesis argues that the Organization must, as a minimum, be more aggressive in the enforcement of the existing provisions pertaining to the privileges and immunities to be afforded it wherever it may be situated throughout the world. This is the minimum. But even this is not considered sufficient. The Model SOFA should be rescinded. The General Assembly should take the necessary steps to propose a new convention (New Convention) to the Member States. The New Convention will ultimately replace the 1946 Convention. The New Convention will be an embodiment of the relevant provisions of the Charter, the 1946 Convention and the Model SOFA. It must be a comprehensive document which will set out with clarity the specific rights, privileges, immunities, obligations and responsibilities of the Organization and of the respective authorities hosting any and all United Nations

operations. It must be a definitive commitment by the Member States to the terms and conditions under which the United Nations will deploy anywhere in the world no matter what the circumstances. The latitude for individual tailoring of a host authority's responsibilities must be eliminated. An effective sanctioning or enforcement mechanism, to come into effect immediately when a host authority reneges on its responsibilities, must be provided for.

The New Convention must have universal application. It must be enforceable as regards *de facto* authorities, having control over a particular territory in which the United Nations may be operating, and all internationally recognized nation states, whether they are Member States of the United Nations or not, whether they are parties to the New Convention or not. In the case of voluntary acceptance of a United Nations presence in a specific territory, the terms of the New Convention shall apply regardless of the circumstances. The New Convention shall also apply in circumstances where the stationing of a United Nations presence in a territory is without the acquiescence of the host authorities as would most likely be the case when the Security Council takes action pursuant to Article 42 of the Charter to maintain or restore international peace and security.<sup>15</sup>

Finally, the New Convention must provide that, in the event that a particular nation would suffer undue hardship or is

physically not able to meet its obligations in any regard, the United Nations shall take all steps necessary to sustain itself. But the costs thereof shall be recorded and held in abeyance as amounts owing to the Organization by the applicable host authority, to be paid at such time as it is capable of paying. In other words, no more free ride; much less windfall.

While the peace-keeping type of operation will form the backdrop for this thesis, it cannot be stressed too strongly, that the obligations of a host nation set out in the Charter and the 1946 Convention apply whenever the United Nations is present in the territory of a Member State. The reason for the presence is irrelevant. Similarly, although the Model SOFA is geared towards a military type of operation, as indicated by the Secretary-General in his covering letter to the General Assembly, the Model SOFA was also intended to serve as a basis for an agreement with a host country in operations where no military personnel are deployed.<sup>16</sup> Further, reference will be made primarily to *nation states*, but where applicable, this should be read to include *de facto authorities*.<sup>17</sup>

The next part of this thesis, Part II, will set out, in general terms, the effects on the United Nations Organization when a host authority's obligations are not met. Part III will analyze the privileges and immunities of the United Nations as they are provided for in the context of the Charter, the 1946

Convention and the Model SOFA. Extensive reference will be made to the operation of the United Nations Protection Force in the former Yugoslavia (UNPROFOR), to illustrate how the current scheme is not working. Part IV will offer a solution.

## II. When a Host Nation's Obligations Are Not Met

A number of major effects are perpetrated on the United Nations Organization when a host nation's obligations are not met. The first, and by far the most obvious, effect is financial. Secretary-General Boutros Boutros-Ghali sets out the reality of the financial problem in graphic terms: "A chasm has developed between the tasks entrusted to this Organization and the financial means provided to it. The truth of the matter is that our vision cannot really extend to the prospect opening before us as long as our financing remains myopic."<sup>18</sup>

Speaking of peace-keeping alone, the Secretary-General advises that thirteen peace-keeping operations were established between the years 1945 and 1987, thirteen more between 1987 and 1992 and that the costs of these operations aggregated some \$8.3 billion until 1992.<sup>19</sup> In 1993, the cost of peace-keeping missions was expected to rise from \$1.4 billion in 1992 to an estimated \$3.6 billion by the end of 1993.<sup>20</sup> As at 15 August 1994, Member States owed \$835 million to the regular budget of the Organization and \$2.6 billion for peace-keeping operations.<sup>21</sup>

That is to say in excess of \$3.4 billion is owed to the Organization by Member States.

The United Nations Organization, like all other organizations, corporations and indeed individuals in the world, needs money to operate. The Secretary-General's figures with respect to the arrears owing to the Organization are staggering. His figures are current to 15 August 1994 only. Since that time the Organization has initiated new and enhanced existing operations throughout the world, such as Haiti, for which the costs are not accounted in the above figures.

Membership in the United Nations is open to all peace-loving states which accept the obligations contained in the Charter and which, in the judgment of the Organization, are able and willing to carry out those obligations.<sup>22</sup> Membership confers on Member States certain rights and privileges but in turn it also imposes certain obligations. All Member states are bound to fulfil in good faith the obligations assumed by them in accordance with the Charter<sup>23</sup> and to give the United Nations every assistance in any action it takes in accordance with the Charter.<sup>24</sup>

Member States are asked to contribute assistance in many ways. Some are asked to contribute personnel; some are asked to contribute equipment; some are asked to contribute financially;

and some are asked (and indeed sometimes do the asking themselves) to host United Nations missions or operations. One of the major forms of assistance requested of a Member State which is to host the United Nations is in relation to privileges and immunities.

The United Nations Organization's primary source of funding is from the assessments and contributions of its Members. It can only carry out those activities which the Member States are prepared to pay for. But the financial contributions to the Organization need not always be in the form of cash payment. In extending to the United Nations the appropriate privileges and immunities as they pertain to taxes, duties, tolls, use of airfields, roads, waterways, provision of accommodation, foodstuffs and other items of like nature, a host Member State can also meet, in part, its obligations to support United Nations actions.

While there is a substantial financial price tag attachable to each of these items if the United Nations is forced to pay for them out of the United Nations budgetary sources, in many cases, they involve little or no additional expense for the host nation concerned. With respect to the payment of taxes and road tolls for example, if the United Nations were not present in the host territory at all, the host would not be receiving any income from such sources visa-vis the United Nations. So to grant the United



Nations immunity from these payments is not really costing the host nation anything at all. Consider as well the reason for which the United Nations is in the host's territory in the context of the peace-keeping operation. The United Nations presence is with the consent and for the specific benefit of the host nation. In the event that certain privileges and immunities do involve a financial cost to the host nation, it is considered that this is a small price for that nation to pay for the assistance which it is receiving virtually cost free<sup>28</sup> from the Organization in order to attain lasting peace in its land.

When contrary to its obligations, a host nation fails to extend to the Organization the privileges and immunities to which it is entitled, that nation is evading its obligations. It is projecting its own responsibilities and financial burdens directly on to its fellow Members States, reaping an unjust enrichment and thereby letting the entire Organization down. Someone will eventually have to pay.

But the United Nations also has obligations in this regard. It has a duty in its own right to vigorously enforce the privileges and immunities to which it is entitled. When the Organization permits a host nation to evade its obligations, it is letting itself and each and every Member State down. The duty imposed upon the Organization in this regard is even more important in situations where the potential for that host country

to use the Organization for its own benefit, both politically and economically, at the expense of the Organization, is high.

Consider the UNPROFOR operation. The concept for the United Nations peace-keeping operation in the, then six, Yugoslav Republics, proposed by the Honourable Cyrus R. Vance, Personal Envoy of the Secretary-General and Marrack Goulding, Under-Secretary-General for Special Political Affairs, to the Secretary-General in 1991 specifically provided:

6. The operation would be financed collectively by the Member States of the United Nations. But the various Yugoslav authorities would be expected to make available to the United Nations, free of charge, as much as possible of the accommodations and other facilities and supplies, such as food and fuel, that would be required by the operation. They would also be asked to conclude with the United Nations agreements concerning the privileges, immunities and facilities which the operation and its members would need in order to carry out their functions, especially complete freedom of movement and communications.<sup>26</sup>

UNPROFOR personnel began deploying to the mission area in March 1992. Despite much effort on the part of United Nations officials, as at 30 June 1994, only one SOFA had been signed<sup>27</sup> and

one other was about to be concluded by means of an exchange of letters.<sup>28</sup> Further, I consider it fair to say that none of the authorities, with or without a signed SOFA, was meeting, to the fullest extent, its host obligations.

In his 19 October 1994 report to the General Assembly, on the financing of UNPROFOR, the Secretary-General's estimated cost of maintaining the UNPROFOR operation for the six-month period from 1 October 1994 to 31 March 1995 totalled US\$992,688,900.<sup>29</sup> The estimated monthly cost of maintaining UNPROFOR for the six-month period from 1 April 1995 to 30 September 1995 is US\$134,731,500 per month.<sup>30</sup> Unfortunately, under the space constraints of this thesis, it is not possible to conduct a detailed audit of these estimates to determine with certainty which items are in fact privileges and immunities which the various host authorities in the former Yugoslavia should be providing free of charge. However a precursory look at the Secretary-General's report does indicate estimates for rations for military contingents, rental of premises, upgrading of airstrips, upgrading of roads, repair of bridges, fuel, and airport landing fees.<sup>31</sup>

Under the privileges and immunities provisions of the Charter, the 1946 Convention, the SOFA, and the concept for the UNPROFOR operation as reported by Mr. Vance and Mr. Goulding, the United Nations shouldn't be paying any of these charges. But it

is. The host authorities are thus not only failing to meet their responsibilities, but they stand to make a substantial profit from so doing. Croatia, who has refused to sign a SOFA, stands to gain the most: it hosts the United Nations headquarters for the entire operation and most of the procurement process is conducted from within that Republic. The United Nations permits the situation to continue.

As at 31 December 1994, the Federal Republic of Yugoslavia (FRY) owed US\$808,293 in back assessments; Croatia owed US\$679,054; Bosnia and Herzegovina (BH) owed US\$178,634; The Former Yugoslav Republic of Macedonia (FYROM) owed US\$50,790; and Slovenia owed US\$216,002. Neither the FRY, Croatia, BH or FYROM made any payments in either 1993 or 1994. The only country to make any contribution was Slovenia who paid US\$96,110 in 1994.<sup>32</sup> These amounts are really quite trifling when one considers that the United Nations is spending in excess of US\$134 million per month in the territory of the former Yugoslavia to help the peoples therein. Yet the host authorities won't even pay these small amounts.

Aside from the financial effects caused to the United Nations Organization by the shortcomings of host nations, other, perhaps less immediately obvious but equally far reaching, effects also manifest themselves. The Organization may be so hamstrung that it will be rendered unable to carry out the

purposes for which it is in the host territory in the first place. It may be unable to protect its personnel within the mission which will result in difficulty recruiting personnel and troop contributing nations to support that particular operation, or for that matter any other operations throughout the world. When the Organization is unable to carry out its operations, whether through its own fault or that of others, it tends to wear the blame. It is the United Nations which is criticized publicly for incompetence. Rarely does the international, domestic or local press blame the host authorities whose activities are the root cause of the Organization's problems. It is the United Nations who loses international respect.

This is readily obvious to anyone who spends any amount of time in the UNPROFOR area of operation. The truth of the matter is, that every single one of the parties is manipulating the international press, the other Member States of the United Nations, the United States and the entire world community. None of the parties is permitting the operation the complete freedom of movement to which it is entitled. Obstruction and harassment are the norm. Privileges and immunities are virtually non-existent. The United Nations is paying the price both financially and politically.

All of the effects identified above are intrinsically intertwined. Without money, or to put it another way, when money

is bled from the Organization with little or nothing given in return, no organization can survive. But if interference with an operation is of sufficient degree that it binds the hands of that operation, the job cannot be done and no amount of money can get the job done. The Organization might as well pack up and go home. If this happens, the global efficacy of the entire Organization is called into question.

### III. United Nations Privileges and Immunities

Although widely used throughout the international community, nowhere is the term *privileges and immunities* officially defined. What is a privilege? What is an immunity? What are these terms understood to mean as they pertain to the United Nations Organization and its operations? *Black's Law Dictionary* offers many varied definitions<sup>33</sup> of the word *privilege*. One such definition reads:

**PRIVILEGE.** A particular and peculiar benefit or advantage enjoyed by a person, company, or class, beyond common advantages of other citizens. An exceptional or extraordinary power or exemption. A right, power, franchise, or immunity held by a person or class, against or beyond the course of the law.<sup>34</sup>

*Immunity*, is defined as:

IMMUNITY. Exemption, as from serving in an office, or performing duties which the law generally requires other citizens to perform ... [F]reedom from duty or penalty ... [T]he term aptly describes an exemption from taxation ... [A] particular privilege.<sup>35</sup>

These definitions, which unfortunately refer alternately one to the other, thus muddying any clear distinction between the two, do make it clear that the beneficiary is in an exempted class as compared to the norm. But they offer little in the way of determining in detail, exactly what is a privilege or immunity.

The major problems in relation to privileges and immunities for the United Nations Organization tend to arise more in the peace-keeping realm than in respect of the Organization's headquarters and other operations. But the principles are the same. Host nation responsibilities are identical no matter what the mission.

In the peace-keeping milieu, privileges and immunities is understood to mean:

*Privileges and immunities.* The peace-keeping operation, as a subsidiary organ of the United Nations,

enjoys the status, privileges and immunities of the Organization provided in Article 105 of the Charter of the United Nations and the Convention on the Privileges and Immunities of the United Nations. Additionally, the Secretary-General endeavours to conclude a status agreement with the host Government(s) concerning the work of the operation. This agreement covers matters such as the status of the operation and its members, responsibility for criminal and civil jurisdiction over the members of the operation, premises, taxation, customs and fiscal regulation pertaining to the members of the operation, freedom of movement, use of roads, water-ways, port facilities and airfields, water, electricity and other public utilities, locally recruited personnel, settlement of disputes or claims, liaison, etc.<sup>38</sup>

As this illustrates, it is clearly intended that to the extent humanly possible all conceivable matters pertaining to the presence of a United Nations operation on the territory of a Member State, down to the minute detail as it effects the personal lives of the associated personnel, shall be determined with clarity.

The United Nations documents designed to achieve that clarity are: the Charter, the 1946 Convention, and the Model



SOFA. Each document builds one upon the other. The Charter sets out the fundamental principle that the United Nations shall enjoy special status in the territory of each Member State. The 1946 Convention sets out the main subject areas in which the United Nations is to enjoy that special status and provides some detail with respect thereto. The Model SOFA breaks the subject areas down further and attempts to define in as specific detail as possible what privileges and immunities are deemed necessary for the United Nations to carry out its operation in the territory of a host nation on a day to day basis.

*A. The Charter of the United Nations*

The Charter of the United Nations specifically addresses the status of the Organization, its officials and representatives of the Members in the territory of another Member. Article 104 stipulates that "The Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfillment of its purposes."<sup>37</sup> Article 105 mandates that the United Nations Organization and its officials and representatives of the Members in the territory of each of its Members in connection with the exercise of their functions with the Organization, shall enjoy the privileges and immunities necessary for the fulfillment of its, the United Nations Organization's, purposes.<sup>38</sup> Once again, of particular importance, it is to be noted that these articles

apply across the board, no matter what reason or purpose calls for the United Nations to have a presence in the territory of a Member State. They are in no way restricted to any specific type of United Nations operation.

On their face, and given good faith adherence thereto by the Organization and all Member States, the provisions of Article 104 and Article 105 should be sufficient protection for the interests of all concerned - the Organization as an entity unto itself, the representatives of Members, officials of the Organization, and the host State. The message is clear. The United Nations Organization and all persons assisting it in its functions must be afforded all necessary privileges and immunities that it determines necessary for the carrying out of its purposes and functions.

The General Assembly is that organ of the United Nations which is comprised of representatives of all Member states.<sup>39</sup> At paragraph 3 of Article 105 the General Assembly is authorized to make recommendations with a view to determining the details of the privileges and immunities necessary for the United Nations' fulfillment of its purposes. The General Assembly is also authorized to propose conventions to the Members. Such a convention was proposed and adopted by the Members in 1946 - the Convention on Privileges and Immunities of the United Nations.<sup>40</sup>

## *B. The 1946 Convention*

The Convention on the Privileges and Immunities of the United Nations was adopted by the General Assembly on 13 February 1946 during its First Session.<sup>41</sup> It was considered to be one of the first priorities of the new Organization of world states.

The 1946 Convention is founded upon Articles 104 and 105 of the Charter and the preamble consists of a recitation of those articles. The 1946 Convention is, relative to the length of the various conventions emanating from the United Nations these days, very short.<sup>42</sup> Nevertheless, since its adoption it has been the cornerstone of the presence of the United Nations Organization in the territory of Member States throughout the world. It attempts to define the major areas of concern in which a clear understanding on the part of both the Organization and the respective Member States is essential to the free and unencumbered operations of the Organization.

Article I defines the juridical personality of the United Nations Organization. Article II specifies the privileges and immunities that shall pertain to the property, funds and assets of the Organization. Article III ensures unto the United Nations certain rights and privileges in relation to communications. Articles IV, V and VI delineate the privileges and immunities to be enjoyed by the personnel which may comprise a United Nations

presence in the territory of a Member State. Article VII deals with the documentation required for entry into and travel within the territory of a Member State. Article VIII provides for the settlement of disputes. The Final Article, as it is so-titled, provides for accession by the Members and for the conclusion of supplementary agreements by the Secretary-General with any Member State.

1. *Juridical Personality*--The United Nations is given legal status for three specific purposes: contracting, acquisition and disposal of property and the right to institute legal proceedings.<sup>43</sup> Notably absent is the capacity to have legal proceedings instituted against it, i.e. the capacity to be sued. This is a source of much frustration for host nations and their citizens and commercial enterprises having dealings with the United Nations. The problems are directly related to the dispute settlement provisions of Article VIII and will be discussed in greater depth under that heading.

2. *Property, Funds and Assets*--United Nations property and assets are immune from every form of legal process;<sup>44</sup> its premises are inviolable;<sup>45</sup> its property and assets are immune from search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action.<sup>46</sup> The wording of these provisions is crystal clear. There is no room for misinterpretation.

However in the Yugoslav operation, these provisions are breached repeatedly by all of the parties to that conflict. An example of this is with respect to United Nations resupply convoys. Both in Bosnia and Herzegovina and in Croatia, UNPROFOR convoys are harassed continually. In territory under Croat control, Serb control (in the FRY, Croatia or BH) or territory under control of the BH Government, UNPROFOR convoys are stopped at gun point - AK 47's are the personal weapon of choice. The right to search is demanded. The parties responsible for stopping the convoys may be either soldiers, policemen, or customs personnel. Invariably on the ground, the convoys would be permitted to proceed if a portion of the load was given up. Alternatively, the parties would demand the right to search because they *knew* that UNPROFOR was carrying weapons for the enemy!

UNPROFOR has every reason to believe that all parties were acting with the full knowledge and consent, if not under the direct orders, of the respective governments or *de facto* authorities. When the provisions of the 1946 Convention with respect to search and seizure of United Nations property are pointed out to the governments and other authorities, the response is usually dismissive: *that's all well and good, but this is our sovereign territory and we have the right to know and verify what you are carrying.* Both the Croats in Croatia and the

Serbs in BH determine it their right to scrutinize convoy load manifests and determine whether or not UNPROFOR really needs the items and/or the quantities listed thereon.

Nor are the governments willing to assist when UNPROFOR vehicles are stolen. This is so even when the perpetrator is known. Often the excuse given is that the United Nations owes money to the perpetrator, on a claim for example. If the United Nations would pay, they would get the car back. The host authorities will not intervene further. When the cars aren't stolen, often they are *borrowed*, with driver, at gunpoint. This is what UNPROFOR has come to know as the *CIVPOL taxi service*. United Nations Civilian Police (UNCIVPOL) are unarmed policemen living throughout the operation area. With fuel scarce in the war zone, soldiers have taken it upon themselves to stop CIVPOL cars and insist on being driven to another locality. With an AK-47 in the face, few CIVPOL would refuse. When UNPROFOR has protested such actions, the authorities shrugged. That this constitutes improper requisition, confiscation, expropriation or any other form of interference with United Nations property is of little or no interest to them.

The 1946 Convention specifically exempts the United Nations from all direct taxes, with the caveat however that the United Nations will not claim exemption from taxes which are in fact no more than charges for public utility services.<sup>47</sup> What is a

direct tax and what is a service? The 1946 Convention offers no answers to these questions which are fundamental to understanding the import of the specific privilege upon which the United Nations must be entitled to rely in this regard. This item is one of the most contentious in the relations between the administration of a United Nations operation and host nations. The need for the linkage of taxes and services is unclear. Practice indicates that the two are severable. That portion of a charge which comprises tax can be easily separated from the actual cost of rendering a service. The United Nations should not pay the tax under any circumstances.

The next question to arise is what, if any, services should the United Nations pay for. Again one must consider the circumstances under which United Nations operations are deployed to the territory of a host nation. Historically, unless the United Nations is taking enforcement action to maintain or restore international peace and security in accordance with Chapter VII of the Charter,<sup>48</sup> it will not, as a matter of strict policy, establish or maintain a presence within the sovereign territory of a Member State without the consent of the authorities of that Member. This practice is in keeping with one of the fundamental tenets of the Organization that: "The Organization is based on the principle of the sovereign equality of all its Members."<sup>49</sup>

In fact, the question of host nation consent became an issue

in the United Nations' first peace-keeping mission, the United Nations Emergency Force in Egypt (UNEF). In May 1967, the Egyptian Government asked for UNEF contingents to be pulled back from their locations. The Secretary-General, U Thant, treated the Egyptian Government request as a request for withdrawal and decided that the United Nations force could not remain in Egypt without the consent of the Government.<sup>50</sup> A similar problem is currently plaguing the United Nations with respect to the United Nations Protection Force in the former Yugoslavia (UNPROFOR) where Croatian President Franjo Tudjman ordered UNPROFOR to leave the territory of Croatia on or before 30 June 1995 unless certain demands from him with respect to amendment of UNPROFOR's mandate in Croatia are met.<sup>51</sup>

Thus one might reasonably assume that no host nation would consent to the United Nations presence in its territory unless such presence was to its distinct advantage. By past experience, most United Nations operations in host nations are of a peace-keeping nature. As such, the money and effort expended by the Member States on the operation is of the particular and direct benefit to the host nation, in assisting its return to a peaceful state, the rebirth of its economy and the restoration of the welfare of its citizens. The nation must bear some of those costs. Practically speaking, if the nation could afford to go to war, it can afford to provide the administrative and logistical support required by the United Nations to help it restore peace



in its territory.

To permit the host nation to capitalize on the United Nations presence by means of taxation direct or indirect, or by charging for services which the host nation is fully capable of providing at no cost, is manifestly unfair to the rest of the Members of the Organization. The resultant financial advantage to the host nation would constitute unjust enrichment. An example of how financially rewarding that unjust enrichment can be has already been discussed in light of the UNPROFOR cost estimates in Part II.<sup>52</sup> It must be remembered as well, that all Member States, even if they are not troop-contributing nations, are already providing financial assistance to the host nation through the assessments levied against them by the Organization in respect of that particular operation. It is not right or just that other Member States be expected to pay more because a host nation refuses to share its burden of the costs of the operation, especially when that operation is for its own benefit.

It follows therefore, that, unless there are very cogent extenuating circumstances that would prevent a host nation from so doing, the host nation should be expected to provide all of the services required by the operation at no cost to the United Nations, and it must not in any way, either directly or indirectly, be entitled to receive any form of taxation in relation to those services. In the event that cogent extenuating

circumstances do exist, as determined by the United Nations operation, then the United Nations should acquire the services under its own auspices. It should keep an accounting for later determination by the appropriate United Nations body as to whether or not the host nation should be held to reimburse the Organization for its expenses in this regard. The concept of a New Convention, as proposed by this thesis, must make provision for the implementation of a scheme of this nature. Further, the host nation must be forced to provide the services when it is capable, as determined by the Organization of doing so.

The 1946 Convention also exempts the United Nations from customs duties, prohibitions and restrictions in respect of goods imported and exported for official use.<sup>53</sup> But the 1946 Convention then stipulates that the United Nations will not "claim exemption from excise duties and from taxes on the sale of movable and immovable property which form the price to be paid."<sup>54</sup> Why? This appears to be a distinction without a difference. Further, a duty is imposed on Member States to make administrative arrangements, whenever possible, for remission of the duty or tax paid on important purchases for official use of property on which duties and taxes have been charged or are chargeable.<sup>55</sup> It is difficult to conceive of when the United Nations would make an "unimportant" "unofficial" purchase. The United Nations is an operating body limited by budgetary constraints as any other operating body, there are no extra funds available for any

purchases, large or small, which the Organization does not need. All United Nations purchases are important and for official purposes.<sup>58</sup> Thus the question arises, why pay the tax in the first place if it is only to be reimbursed? Perhaps more importantly for the Organization, in practical terms, why permit the host nation the "out" of saying reimbursement is not "possible"? Once paid, the chances of the United Nations being reimbursed the duties or taxes is slim. The New Convention must tightened this up.

What the foregoing hybrid clauses result in doing, is permit the host nation both directly and through its business community to reap taxes which would otherwise not be payable in accordance with the stated spirit and intent of the 1946 Convention. The host nation thus, not only fails to meet its obligations but it benefits financially in a very substantial way as a result of its failure in that regard. If the United Nations correspondingly fails to adequately enforce its privileges, the rest of the Organization foots the bill.

In UNPROFOR, the Croatian Government is deliberately thwarting these provisions, it is charging taxes and it is making no effort whatsoever to effect reimbursement. When UNPROFOR's goods and supplies are brought into Croatia on non-United Nations vehicles, the Croatian customs authorities charge the truck driver the customs duties knowing that UNPROFOR must reimburse

him in return. That UNPROFOR was entitled to import the goods duty free is irrelevant. Because the vehicle on which the goods are carried is not United Nations owned, according to the Croatian authorities, the privilege can not be extended.

It is recommended that the New Convention remove the caveat placed on the United Nations' exemption to customs and excise duties and sales taxes and provide that the privilege shall be absolute. No tax, custom or excise duty is to be included in the purchase price of any purchases of the United Nations world wide. Who the carrier of such goods may be at any given time is to be of no relevance. If the goods are being purchased by and for the United Nations, no such charges are payable. Greater clarity will result; the need for the host nation to make restitution will be removed; and the United Nations will be in a more positive position to enforce its exemptions on these items.

3. *Communications*--In the matter of priorities, rates and taxes on mails, cables, telegrams, radiograms, telephotos, telephone and other communications, and press rates for information to the press and radio the United Nations is to be afforded treatment not less favourable than the treatment a host nation affords to official Governments, including their diplomatic missions.<sup>57</sup> In addition, official United Nations correspondence and communications are exempt from censorship<sup>58</sup> and the United Nations has the right to use codes and to despatch

and receive correspondence by diplomatic courier or in bags.<sup>89</sup>

These communication provisions raise the question of taxes again. Why should the United Nations pay for taxes in relation to communications but not in relation to property? There is no viable reason. Similarly, a number of services are identified with respect to communications. It is considered that the United Nations should enjoy whatever services of this nature the host nation can supply, at no cost to the United Nations, not simply at a *not less favourable* rate as compared to the diplomatic missions. The United Nations is there to help the host nation. The host nation has the duty to help the United Nations render that help. The New Convention must provide the framework to identify and enforce the host nation's duties in this regard.

4. *Personnel*--Articles IV, V, and VI of the 1946 Convention attempt to set out the status and privileges and immunities of the different categories of personnel who may have cause to be in the territory of a Member State in connection with United Nations official business. Three categories of personnel are identified: Representatives of Member States, Officials of the United Nations, and Experts on Missions for the United Nations.<sup>90</sup>

The Charter stipulates that these persons are to be afforded such privileges and immunities as are necessary for the independent exercise of their functions.<sup>91</sup> With respect to

individuals, *Black's Law Dictionary* defines *privilege* as:

An exemption from some burden or attendance, with which certain persons are indulged, from a supposition of law that the stations they fill, or the offices they are engaged in, are such as require all their time and care, and that, therefore, without this indulgence, it would be impracticable to execute such offices to that advantage which the public good requires.<sup>82</sup>

In furtherance of the Charter, and in consonance with this definition, the 1946 Convention itemizes a number of privileges and immunities which must obtain to the categories of personnel identified in order for them to execute the independent function of their offices to the advantage of the public good. By far the most important immunity is the immunity from legal process of any kind in respect of words spoken or written and all acts done by the respective individuals in their capacity as representatives of Members<sup>83</sup> or officials of the United Nations,<sup>84</sup> or, in the case of experts on mission, in the course of the performance of their mission.<sup>85</sup> This is what is known as functional immunity. That is to say, the persons so protected will not be held accountable to the authorities of a host nation with respect to any actions carried out by them in the territory of that host nation as part of their responsibilities and duties for the United Nations Organization. This is an absolute must for United Nations

personnel. They must be free to conduct their duties without fear of censure from the local authorities. This is particularly so with respect to locally recruited United Nations personnel, who are, for the most part, citizens of the host nation and therefore the group most subject to abuse by the host nation in this regard. As reflected in the dictionary definition, it is by virtue of the position, not the person, that the privilege must extend.

There will be times when a host nation considers the actions of a United Nations personnel member to be contrary to the interests of the sovereignty of that State. The problem arises however with respect to who will decide whether or not a particular action complained of does or does not come within the framework of the individual's official functions? Clearly from the United Nations perspective, the Organization must have the final say in the making of that determination. To hold otherwise would be tantamount to removing completely the very protection which the Charter enshrines for these persons throughout the world. Article VIII places responsibility on the United Nations for making provision for the settlement of immunity disputes. This the United Nations has done, but the United Nations procedures are of little comfort to a United Nations personnel member when he or she is in the jail of a host nation because the host nation does not wish to comply. When the host nation usurps the position of the United Nations in this regard, or in the

alternative when the United Nations fails to assert itself for the protection of its personnel, the confidence of the entire operation is undermined. Tighter enforcement measures must be provided for in the New Convention proposed by this thesis.

The 1946 Convention is silent as to legal process in respect of alleged activities which are not related to the independent exercise of the accused's official functions. In practice, the jurisdiction of the host nation prevails in all cases both of a criminal and a civil damages nature. Territorial jurisdiction is one of the basic attributes of sovereignty: "By territorial jurisdiction is meant the basic jurisdiction of the State over individuals living on its territory, over things which are on this territory and over facts which occur there."<sup>88</sup>

Without wishing to abrogate in any way the principles of sovereignty and territorial jurisdiction, I think United Nations personnel ought to be given greater protection for non-functional immunity than that which is currently afforded them. These persons voluntarily give of themselves to go into the territory of a State, which is not their State of citizenship and is often, lesser developed than their home State, to assist that foreign State in the resolution of certain problems for which the assistance of the United Nations was needed.

Sovereign states and international organizations have always been loath to send their citizens and official representatives



into the territory of another sovereign state without some guarantee that they will be treated fairly and with due respect for their status as official visitors in that foreign state. All United Nations personnel should be given at least the same due regard as diplomatic missions. To the extent possible and reasonable, they should be dealt with administratively and juridically in accordance with a cultural system with which they are familiar. For many reasons, not the least of which being the degree of cultural advancement in the respect for human rights and the existence of a form of government which respects those rights, in the host state, it is not always possible to guarantee suitable protections for personnel employed in the context of the operations in which the United Nations often finds itself. Functional immunity provides some protection. Why not non-functional immunity?

The matter is resolved for military members of a United Nations operation in the Model SOFA where the authorities of the Participating State retain exclusive criminal jurisdiction over the members of their respective militaries. With respect to civilian members of a United Nations operation, resolution remains in favour of the host nation. This should be changed. The New Convention should provide that criminal legal process immunity be absolute visa-vis the host nation. However, that is not to say, that United Nations personnel who do commit criminal offences should not be held accountable for their actions in some

other forum.

Rather, several possible options exist to ensure that this does not occur. The United Nations personnel member could be turned over to his State of citizenship for prosecution of the more serious offences. It would be incumbent, in such circumstances, on the United Nations Organization to render all necessary assistance to the court thus seized with the jurisdiction of the matter, to ensure that the ends of justice are met. It would likewise be incumbent upon all parties to ensure that domestic laws permit and ensure the appropriate prosecution of offences committed extra-territorially in this regard. Alternatively, consideration could be given to expanding the jurisdiction of the International Court of Justice, such as was at one time contemplated with respect to the prosecution of war crimes in the former Yugoslavia, to permit that court jurisdiction over criminal offences committed by United Nations personnel outside their country of origin. As well, for crimes of a lesser degree of severity, the internal disciplinary procedures of the United Nations could be amended to accommodate dealing with such matters.

These are but three options. There are others. What is important, is that the New Convention address the plight of United Nations civilian personnel who are, under the current privileges and immunities provisions, subject to the jurisdiction

of the host nation in relation to offences committed which are not protected by functional immunity.

A number of other privileges and immunities are cited in relation to one or the other of the three categories of personnel identified in articles IV, V, and VI of the 1946 Convention:

(a) Representatives of Members and experts on mission enjoy:

i. immunity from personal arrest and detention and from seizure of their personal baggage;<sup>67</sup>

ii. inviolability for all papers and documents;<sup>68</sup>

iii. the right to use codes and to receive papers or correspondence by courier or in sealed bags;<sup>69</sup>

iv. the same facilities in respect of currency or exchange restrictions as are accorded to representatives of foreign governments on temporary official missions;<sup>70</sup> and

v. the same immunities and facilities in respect of their personal baggage as are accorded to diplomatic envoys.<sup>71</sup>

(b) Representatives of Members also enjoy:

i. exemption from immigration restrictions, aliens registration or national service obligations in the state they are visiting or through which they are passing in the exercise of their functions;<sup>72</sup> and

ii. such other privileges and immunities and facilities not inconsistent with what has been specifically provided for as diplomatic envoys enjoy, except that they shall have no right to claim exemption from customs duties on goods imported (otherwise than as part of their personal baggage) or from excise or sales taxes.<sup>73</sup>

(c) Officials of the United Nations shall also:

i. be immune from national service obligations;<sup>74</sup>

ii. be immune from immigration restrictions and alien registration;<sup>75</sup>

iii. be accorded the same privileges in respect of exchange facilities as are accorded to the officials of comparable ranks forming part of diplomatic missions to the Government concerned;<sup>76</sup>

iv. be exempt from taxation on the salaries and emoluments paid to them by the United Nations;<sup>77</sup>

v. be given the same repatriation facilities in time of international crisis as diplomatic envoys;<sup>78</sup> and

vi. have the right to import free of duty their furniture and effects at the time of first taking up their post in the country in question.<sup>79</sup>

The 1946 Convention also confers on the Secretary-General and all Assistant Secretaries-General, in addition to those privileges and immunities provided to officials of the United Nations generally, the privileges and immunities, exemptions and facilities accorded to diplomatic envoys, in accordance with international law.<sup>80</sup>

To give weight and effect to any concerns, particularly of the host nations, that the privileges and immunities might be abused, a caveat is placed on all privileges and immunities: they are afforded to the respective categories of personnel in the interest of the United Nations and not for the personal benefit of the individuals themselves.<sup>81</sup> A specific duty and a right are imposed on a Member State<sup>82</sup> or on the Secretary-General,<sup>83</sup> as applicable, to waive the immunity in respect of any

individual in any case where, in the opinion of the Member State or the Secretary-General, the immunity would impede the course of justice and can be waived without prejudice to the interests of the United Nations.<sup>84</sup> Further, the United Nations has a duty to "co-operate at all times with the appropriate authorities of Members to facilitate the proper administration of justice, secure the observance of police regulations and prevent the occurrence of any abuse in connection with the privileges, immunities and facilities ...."<sup>85</sup> If a scheme such as that proposed with respect to non-functional immunity were to be instituted, the need for this waiver would be removed. Whatever mechanism may be adopted in that regard in the New Convention, it could also be seized with the prosecution of abuse of privileges and immunities cases.

An overall view of the provisions respecting the privileges and immunities of United Nations personnel, raises a further important question: is it necessary to have three different categories of persons to whom the different privileges and immunities apply? In my opinion, it is not. This only leads to confusion and concern in the actual areas of operation where individual personnel are treated differently from their colleagues. In UNPROFOR, one thing was clear - no one is very well informed as to just what his or her particular status may be, much less what privileges and immunities he or she is entitled to. The references to the privileges and immunities of

diplomatic envoys, without further detail and explanation only enhance this uncertainty. Uncertainty contributes to bad moral among United Nations personnel, permits host nations to avoid or ignore their obligations, and makes it more difficult for the United Nations to enforce its own rights and the rights of its personnel. The proposed New Convention would tailor a document specifically for the United Nations in which all uncertainties and ambiguities raised by the current documentation would be reduced substantially, if not eliminated altogether.

5. *Laissez-Passer (LP)*--Article VII of the 1946 Convention is an attempt to remove the requirement for United Nations personnel to carry passports. But it doesn't quite achieve this. Provision is in fact made for how visas are acquired when required.<sup>86</sup> The host nation is required to deal with applications for visas as speedily as possible, and to grant such persons as may be travelling, the facilities for speedy travel.<sup>87</sup> Similar provisions are made for the travel of experts and other persons who do not hold laissez-passer.<sup>88</sup> In addition, the Secretary-General, Assistant Secretaries-General and Directors of the United Nations travelling on United Nations laissez-passer on the business of the United Nations are to be granted the same facilities accorded to diplomatic envoys.

The visa issue is a contentious one. The 1946 Convention specifically permits host nations to require them. But they

impose a substantial administrative burden on any operation, especially if there is a large military contingent; especially in an operation which spans several international borders. Further, when the level of acrimony between the parties whose peace the United Nations is trying to keep, is such that one party resents the visa of another party appearing in a United Nations traveller's passport or laissez-passer, the necessity for duplicate passports and laissez-passer arises. The need for United Nations personnel travelling on official United Nations business under any circumstances to acquire visas must be removed in the New Convention.

6. *Settlement of Disputes*--The 1946 Convention seized the United Nations Organization with the responsibility for making provision for the settlement of disputes arising out of contracts or other private law matters to which the United Nations is a party<sup>88</sup> and any immunity disputes where immunity has not been waived by the Secretary-General.<sup>89</sup> Unfortunately, because the United Nations provisions in this regard are in-house, that is to say, they are comprised of an internal United Nations system of review, they are not widely known and understood in the international community, much less by an individual contractor operating in the midst of some United Nations operation on the other side of the world from United Nations Headquarters in New York. The problem is further compounded by the fact that the United Nations procedures are very slow, time consuming and the



system is currently working under a severe backlog. Coupled with the fact that the United Nations juridical personality permits it to initiate proceedings but does not permit it to be the defendant of proceedings initiated against it, this whole procedure breeds contempt for the United Nations from individual contractors who feel they are unable to get satisfaction through the mechanisms of the United Nations.

There are many examples of this dissatisfaction in UNPROFOR. The United Nations disputes settlement mechanism is so excruciatingly slow that individuals often resort to the *self-help* method of dispute settlement in lieu. For example, UNPROFOR experiences an extremely high number of stolen vehicles. While some are definitely stolen for blatant profit on the black market, as previously indicated, a good number are openly stolen to be held for ransom for the payment of real or perceived debts owing to the *thief* by the United Nations. In addition, UNPROFOR personnel are physically assaulted and made the subject of death threats. In other instances, leases are arbitrarily terminated, the United Nations tenants' personal belongings stolen and they are threatened with physical violence if they don't pay up - even if they have nothing to do with the specific dispute in question. They wear the United Nations uniform, then they must pay. While many of the claims are excessive, unsubstantiated and in some cases out-right fraudulent, if the United Nations had a more efficient and expeditious dispute or claims settlement procedure

a good number of these problems could be defused before they could reach such life-threatening levels of tension.

With respect to disputes arising in respect of the 1946 Convention itself, Article VIII, Section 30 provides:

All differences arising out of the interpretation or application of the present convention shall be referred to the International Court of Justice, unless in any case it is agreed by the parties to have recourse to another mode of settlement. If a difference arises between the United Nations on the one hand and a Member on the other hand, a request shall be made for an advisory opinion on any legal question involved in accordance with Article 96 of the Charter and Article 65 of the Statute of the Court. The opinion given by the Court shall be accepted as decisive by the parties.

A number of nations took exception to this section and filed reservations at the time of ratification of the 1946 Convention. These nations did not wish to be bound by the compulsory referral to the International Court or by the decisive nature of the opinion to be given by the Court. Most nations so reserving, took the position that the consent of all the parties was required in every individual case.<sup>91</sup> As a result, the efficacy of referral to the International Court of Justice is undermined. It

is recommended that the New Constitution adopt a provision similar to that in the United Nations Convention on the Law of the Sea which provides at Article 309: "No reservations or exceptions may be made to this Convention unless expressly permitted by other articles of this Convention."<sup>82</sup>

7. *Supplementary Agreements*--"The Secretary-General may conclude with any Member or Members supplementary agreements adjusting the provisions of this convention so far as that Member or those Members are concerned. These supplementary agreements shall in each case be subject to the approval of the General Assembly."<sup>83</sup> Of particular concern in this section is the use of the word *adjusting*. A dictionary definition of the word *adjust* reads: "to settle or bring to a satisfactory state, so that the parties are agreed in the result."<sup>84</sup> Applying this definition to the 1946 Convention, leaves too much latitude for host nations to avoid their obligations. A New Convention must stipulate that supplementary agreements, if required - which should only be in the rarest of occasions - may under no circumstances be at variance with the terms and conditions of that Convention (New) and the spirit and intent of the Charter.

Commencing with the deployment of the United Nations Emergency Force in Egypt (UNEF), supplementary agreements became the norm. In that particular operation, the supplementary agreement, termed "*ad hoc* arrangements", was concluded by means

of an exchange of letters between the Secretary-General Dag Hammarskjold and the Egyptian Minister for Foreign Affairs.<sup>96</sup> These UNEF *ad hoc* arrangements formed the model for subsequent agreements<sup>98</sup> and ultimately, with a few variations, the basis for the Model SOFA adopted in 1990.

### *C. The Model Status of Forces Agreement*

The Model SOFA is contained in the Annex to a Secretary-General submission to the General Assembly. It is titled: "Draft model status-of-forces agreement between the United Nations and host countries" and is oriented toward peace-keeping operations in particular.<sup>97</sup> Given that it is a *draft*, a *model* and an *agreement*, it is flawed from the outset.

All Member States are bound by the Charter. All Member States who are parties to the 1946 Convention are bound by its terms and conditions. Under no circumstances should they be permitted to conclude agreements which would limit their responsibilities in this regard. As regards States who are not parties to the 1946 Convention, if they wish the assistance of the United Nations which necessitates the presence of a United Nations operation on their sovereign territory, then they must without variance or exception be bound by the 1946 Convention. While, as indicated herein, the wisdom of having a SOFA at all is questioned, having decided to pursue that avenue, the General

Assembly should in fact have adopted a *Status of Forces Statement* or *Status of Forces Declaration*. It should have comprised a definitive statement from the General Assembly setting forth the supplementary details or terms and conditions of host country obligations in respect of privileges and immunities to be accorded the United Nations Organization and associated personnel present in the territory of a Member State. Such approach would have been in keeping with the declaratory nature of both the Charter and the 1946 Convention. This thesis argues ultimately that there is no need for a Model SOFA but rather a more comprehensive New Convention which would comprise the detail in the Model SOFA and the 1946 Convention. But in the interim, there is a Model SOFA to be reckoned with.

The Model SOFA elaborates on the privileges and immunities provided for in the 1946 Convention. It is divided into ten parts. Part I constitutes a definitions section. Part II is a general statement as to the application of the agreement. Part III refers to the application of the 1946 Convention. Part IV sets out the provisions relative to the status of the peace-keeping operation. Part V specifies the facilities to be provided by the host nation for the United Nations peace-keeping operation. Part VI sets out the provisions relative to the status of the members of the United Nations peace-keeping operation. Part VII creates a mechanism for the settlement of disputes. Part VIII provides for the possibility of

supplementary arrangements. Part IX ensures close liaison between the commander of the United Nations operation and the host Government. Part X constitutes a number of miscellaneous provisions. Unfortunately, as can be seen, these Parts do not parallel the provisions of the Convention as closely as one might have liked. This makes direct comparison difficult. However, some of the more notable areas for contention as they arise in Parts I-VIII, will be addressed to highlight the need for revision and incorporation of the terms and conditions of the Model SOFA and the 1946 Convention into a New Convention.

1. *Definitions*--The definitions paragraph leaves it wide open for the parties to insert just about any definition they wish. The danger here is that definitions could be entered which narrow or restrict both the mandate of the operation and the applicability of the various 1946 Convention provisions. In the context of UNPROFOR it will be seen how the parties sought to use the definitions to further their own political aims or in the alternative, refused to sign a SOFA when this could not be done. The United Nations Organization must be ever alert to ensure that this does not happen. If as this thesis proposes, a New Convention were to be adopted by Member States, the definitions needed to permit the efficient carrying out of a United Nations operation would be firm, the risk of using them for political gain would be eliminated.

2. *Application of the Agreement*--Part II of the Model SOFA provides that unless specifically provided otherwise, the provisions of the Agreement and any obligation undertaken by the Government or any privileges and immunities granted to the United Nations operation are applicable in the area of operations or the territory of the host. The Model advises that: "The term Government as used in the present Agreement will be defined to mean the Government of the host country or Administration having *de facto* authority over the territory and/or area of operations in question."<sup>98</sup> In practice, efforts to secure SOFAs with *de facto* authorities have been relatively unsuccessful. The main problem is that the signature of a *de facto* authority on an agreement tends to lend credence to any claim to international status and recognition by that *de facto* authority, who is often the leader of a rebel or other break away political group. Needless to say such rebel groups are most willing to sign a SOFA which will do that. On the other hand, the United Nations must ensure its strict neutrality in the conflict, so it cannot be seen to advance the cause of certain groups who have not been internationally recognized. If the rules emanated from one all encompassing New Convention which would apply across the board, regardless of who the controlling authority was, this problem would be resolved. Whoever may be in control of the territory in question at any time will be obligated to accord the United Nations all privileges and immunities necessary for the carrying out of its functions and purposes in the territory in question as

those privileges and immunities shall be dictated by the New Convention.

UNPROFOR's defined area of operation is *the former Yugoslavia*. As such, it includes all of the six Republics of the former Socialist Federal Republic of Yugoslavia. Nevertheless, when United Nations officials attempted to negotiate a SOFA with Slovenia, the Government refused to even consider the matter. Their position was that they had obtained their independence and they had nothing whatsoever to do with the conflict in Croatia. This attitude prevails today. Further, Slovenia refuses to make accommodation as a neighbouring state, by affording the appropriate privileges and immunities to United Nations goods transitting Slovenia en route to UNPROFOR headquarters in Zagreb, Croatia, or elsewhere in the operation area.

The Government of Bosnia and Herzegovina is the only Government to have signed a SOFA with the United Nations. It was signed in mid-1993, at a time when the war in that Republic was going against the favour of the Government. I personally believe, the SOFA was signed for political reasons - in order to assert publicly the Government's position as the ruling party in Bosnia. This is borne out by the fact, that the BH Government is not meeting any more of its host nation obligations subsequent to its signing of the SOFA than it was before.



The Former Yugoslav Republic of Macedonia (FYROM) wished to sign a SOFA prior to the deployment of UNPROFOR troops to its territory. But the Government tried to insist that the name in the document be reflected as "Macedonia". As this was not the name under which FYROM had been admitted as a Member State of the United Nations, and as it was very much a matter of dispute between the Government of FYROM and the Government of Greece, the United Nations could not accede to the FYROM Government's request. Once this was conveyed to the FYROM Government, their interest in the speedy conclusion of a SOFA waned. UNPROFOR troops were deployed to FYROM in early 1993. Not having succeeded in their attempt to use the SOFA for official recognition of the name "Macedonia", the Government insisted that the matter be concluded by exchange of letters vice a formal agreement. It was not until summer 1994, that such exchange of letters was completed. On the other hand, the FYROM is perhaps the only host territory in the former Yugoslavia which is trying to meet its host nation responsibilities to any degree. Although even there, the United Nations is paying for a great number of items which it ought to at least be keeping an accounting of, for future recompensation when FYROM is in a position to reimburse.

Agreement has been reached on the substantive terms of the SOFAs in the FRY and in Croatia since very early on in the UNPROFOR operation. Nevertheless, the parties do show any interest in concluding the agreements. Negotiations, if the

respective authorities will even agree to meet on the matter of concluding the SOFA, are inconclusive at best. The main point of contention which both the FRY and Croatia have relied on for their stalling revolves around certain definitions. In the case of the FRY, they object to the definition of UNPROFOR in that it encompasses the original concept of Security Council Resolution 743<sup>99</sup> as well as all subsequent Security Council Resolutions pertaining to the UNPROFOR operation. Specifically, they took exception to a number of resolutions which went against their interests.<sup>100</sup> The FRY Government took the position that if they signed the SOFA with UNPROFOR defined to include all Security Council Resolutions they would be seen as concurring or acquiescing with the contents of the Resolutions. Further as time went on, and UNPROFOR greatly reduced its presence in the FRY, the Government began to argue that they too, like Slovenia, were now out of the conflict in Croatia. The UNPROFOR mandate is primarily in Croatia, BH and FYROM. Therefore, the FRY should have no further host nation responsibilities in respect of UNPROFOR. Coincident with the emergence of this argument from the FRY, they began to demand payment of rent for premises occupied as office space by UNPROFOR in the FRY and visas from persons wishing to travel to and within the FRY.

Croatia also objected to a number of the Resolutions on the grounds that they either did not go far enough in sanctioning Serbia (the FRY and the Serbs in Croatia) for not relinquishing

control of the territory known as the UNPAs back to the Croatian Government, or they criticized the Croatian Government for certain unilateral actions which it took to secure return of the UNPAs to the control of the Croatian Government.<sup>101</sup> In addition, the Croatian Government objected to the definition of "territory" in the SOFA. They were concerned that any definition might be interpreted as excluding the United Nations Protected Areas. Even when the United Nations agreed to define "territory" as "the territory of Croatia", they were not happy. They still would not agree to sign. The bottom line appears to be, neither the FRY, or Croatia have any intention of ever executing a SOFA with the United Nations. All efforts to try to convince the respective Government representatives that the SOFA was never intended as a political document, but rather an administrative document designed to facilitate the day to day operations of the United Nations in a host territory, fell on apparent deaf ears.

As regards those areas in the UNPROFOR territory of operation not under control of a recognized Government, the United Nations did not attempt to obtain host authority agreements with the *de facto* authorities. In most cases those authorities, primarily the Serbs in the UNPAs and in BH, would be only too happy to sign an agreement which "properly" reflected their vision of their status: i.e., the "Republic of Serb Krajina" and the "Republic of Serpska" in the UNPAs and BH respectively. If the agreements could not be signed using these

terms, they were not interested. The United Nations does, albeit relatively unsuccessfully, try however to insist on its privileges and immunities in these areas notwithstanding the lack of a SOFA. A sufficiently comprehensive New Convention would eliminate the distinction between internationally recognized and *de facto* authorities.

3. *Application of the 1946 Convention--The Model SOFA* specifically provides that the 1946 Convention shall apply to the United Nations peace-keeping operation. But this is qualified as being subject to the provisions specified in the Agreement.<sup>102</sup> As previously stated, this is inappropriate and is a direct avenue to the dangers inherent in permitting supplementary agreements *adjusting* the 1946 Convention. Any adjusting in the supplementary agreement must be restricted to the narrowest possible interpretation of that word. The Charter and the 1946 Convention remain the cornerstone and legal basis for the SOFA as a supplementary agreement. The SOFA must not in any way conflict with either document. Accordingly, instead of making the application of the 1946 Convention subject to the provisions of the SOFA, this provision should have stipulated, at the very least, that the 1946 Convention is the overriding document. In the event of conflict between the 1946 Convention and the SOFA, the 1946 Convention shall and must prevail. The New Convention, argued for in this thesis, would eliminate this conflict as well. There would be only one document to cover all aspects.

What is appropriate in this paragraph is the reinforcement of the concept that the Convention shall apply without qualification as regards host nations who are not parties to the Convention and entities other than States.<sup>103</sup> But this would not be necessary if such provision were entrenched in an enhanced New Convention.

4. *Status of the Peace-keeping Operation*--The Model SOFA imports a special status to United Nations peace-keeping operations as opposed to other United Nations operations. The peace-keeping operation, its property, funds and assets, and members, including the Special Representative/Commander,<sup>104</sup> shall enjoy the privileges and immunities of the Agreement as well as the 1946 Convention.<sup>105</sup> Further Article II of the 1946 Convention shall apply to the property, funds and assets of the participating States.<sup>106</sup> As previously indicated, the need for the distinction is queried. The United Nations peace-keeping operation is a subsidiary organ of the United Nations. The military assigned to the operation are either representatives of their respective Member States, or they are officials of the United Nations when they are assigned to the operation, albeit of a different category perhaps than the normal civilian United Nations staff member. On the other hand, one might not want to query the distinction too loudly, as in some ways the military force enjoys more than that which is provided for in the 1946

Convention.<sup>107</sup> However, if the distinct status for the peace-keeping operation and the military or civilian members of the participating states is considered desirable, there is no reason why an additional category of personnel for these persons could not be incorporated in a more comprehensive New Convention.

As regards the status of the peace-keeping operation itself, Part IV of the SOFA sets this out in some detail. As a first item, a duty is imposed on the United Nations peace-keeping operation and its members.<sup>108</sup> They shall refrain from activity incompatible with the impartial and international nature of their duties. They shall respect all local laws and regulations. A further duty is imposed on the Special Representative/Commander to take all appropriate measures to ensure the observance of these obligations. At the same time, the host Government undertakes to respect the exclusively international nature of the operation.<sup>109</sup>

The ethos of these provisions is unquestionable. They are fundamental to good relations between the host and the United Nations operation. There is no need for adaption to specific situations such that they must be in a supplementary agreement. These principles must apply to any United Nations presence, on any host territory, under any circumstances, at any time. They could very easily be incorporated into a New Convention.

The host Government must permit the United Nations operation to fly its flag on its headquarters, camps or other premises, vehicles, vessels and otherwise as decided by the Commander.<sup>110</sup> Likewise, the United Nations shall carry distinctive United Nations identification markings, which shall be notified to the Government, on its vehicles, vessels and aircraft.<sup>111</sup> This latter provision is mandatory and it is in keeping with established practices and principles of peace-keeping. It is however, a double-edged sword. The United Nations wants its vehicles distinguishable from those of the local populace; thus, the practice of painting United Nations vehicles white and placing black *UN* markings on them is standard. But this has also made them vulnerable to such interference as the *CIVPOL Taxis Service*, previously discussed, as well as theft or other acts of vandalism or violence. There is no easy solution to these kinds of problems except to say that they do not arise as frequently in United Nations operations where the force is present in the host territory supported by and with the good will of the people. In that regard, I consider it inherent in the concept of privileges and immunities that the host Government must help to foster the good will of its citizens and the respect for the operations of the United Nations in its territory. An example of where the Government is most certainly not endeavouring to take action in this regard, but rather, is in fact spear-heading an active anti-UNPROFOR spirit in its people, is in Croatia. This is so, not just recently but throughout the entire operation of

UNPROFOR. The principle that a host nation must take a more active role toward good relations for the United Nations in the local community is the parallel to the requirement that the United Nations Peace-keeping operation and its members respect local laws and customs. It should be expressly stated in a New Convention.

Between the 1946 Convention, the Model SOFA, and the realities on the ground, the communications provisions are a jigsaw-puzzler's delight. The Model SOFA provides that: "The United Nations peace-keeping operation shall enjoy the facilities with respect to communications provided in Article III of the Convention and shall, in co-ordination with the Government, use such facilities as may be required for the performance of its task."<sup>112</sup> Does this mean that the UN peace-keeping operation must use the Government's facilities? The operative word is *shall*. But in the next paragraph<sup>113</sup> the United Nations is permitted to install and operate much of its own equipment. (Although just what the different equipment permitted is, the writer acknowledges an absolute ignorance of technological matters!) The United Nations must however, co-ordinate, co-operate, and consult with the Government in its activities. Further, as regards connections with the local system of telegraphs, telex and telephones, they may be made only after consultation and in accordance with arrangements with the Government. Finally, the use of the local system of telegraphs, telex and telephones will



be charged at the most favourable rate.

That the United Nations should pay for certain telegraph, telex and telephone services is consistent with the 1946 Convention<sup>14</sup> (although not necessarily with the opinion of the writer, as has been previously stated in relation to the communications provisions of the 1946 Convention). That the United Nations may install its own equipment is a benefit over and above the 1946 Convention. But the requirements to co-ordinate, co-operate and consult with the Government, potentially remove that advantage and place the United Nations at a disadvantage. Arguably, if the Government knows that it is able to provide the services and that it will get paid for it, the incentive to agree to the United Nations installations is low. Thus the United Nations' entire communications system could be held to ransom by the host nation.

The Croatian telecommunications authorities repeatedly tried to get the United Nations to pay for services which were not in fact rendered and when UNPROFOR refused to pay, they threatened, often on very short notice, to shut the operations' communications down completely. This was often on Friday afternoon, at 1600 hours, when they knew that their services would not reopen before Monday the following week.

Communications is a subject matter that is not unique to individual United Nations operations. It is an area which

requires extensive review and clarification. As a minimum, the United Nations must be free to set up its own independent communications system as it sees fit, without the need for extensive consultation, co-operation or co-ordination with the local authorities. Co-operation with the host nations is the most desirable means of carrying out any activities in the territory of a United Nations operation, but when it is not forthcoming, the United Nations must be permitted to over-ride the host's lack of co-operation. Co-ordination with the relevant international communications conventions and agreements, which may require amendment to permit the United Nations as an entity unto itself to have status in accordance with those conventions and agreements will be required. Whatever is agreed upon between the Member States in this regard should be reflected in the New Convention.

The travel and transport privileges and immunities provided for in the Model SOFA were not addressed in the Convention. But they are essential to the success of a United Nations peace-keeping operation, in fact, as this thesis argues, any United Nations operation. Freedom of movement is an absolute must.

"The United Nations peace-keeping operation and its members shall enjoy, together with its vehicles, vessels, aircraft and equipment, freedom of movement throughout the [host country/territory]."<sup>115</sup> The United Nations force cannot operate

without these privileges and immunities. But unfortunately, the next phrase stipulates: "That freedom shall, with respect to large movements of personnel, stores or vehicles through railways or roads used for general traffic within the [host country/territory], be co-ordinated with the Government."<sup>116</sup> Once again the United Nations is held to the good graces of the host authorities. If they are reasonable, the privileges and immunities in respect of freedom of movement will be observed. If not, the host authorities will have failed to meet the spirit and intent of their host country obligations. If the United Nations does not insist on freedom of movement, it fails in its duty to the rest of the Organization's Member States, and will most likely fail in the specific operation concerned as well. A clearly stated convention could define large movements to be applicable world wide, and it could make provision for a system of notification to the host authorities when such movements are to take place. But it must remove the opportunity for abuse on the part of a host authority who refuses to co-ordinate in good faith.

There is virtually no freedom of movement for UNPROFOR in the FRY, Croatia or BH. All of the host authorities seem to enjoy the position of power that the need to co-ordinate confers on them. All of them are obstructionist in carrying out the required co-ordination. Unreasonable demands and restrictions are placed on UNPROFOR convoys. As previously stated, the local

authorities have in many instances taken it upon themselves to determine UNPROFOR's needs as to type and quantity of goods. This has ranged from purporting to determine the amount of food or fuel UNPROFOR may need in a given situation to determining the nature, quantity and size of ammunition need for UNPROFOR soldiers' personal self-defence. The authorities see their position as one of granting permission in freedom of movement situations, rather than that of co-ordinating, must less according the United Nations the privilege to which it is entitled in this regard. UNPROFOR must ask for permission to run a convoy, vice providing notice of its intentions. Rest assured, as well, that if a host authority has not *granted permission*, the convoy will be stopped. As for defining what a convoy is, local host authority interpretations in this regard have ranged for one vehicle to twenty vehicles. Unfortunately, one doesn't always know what definition the host authorities are using on a particular day.

Similar bad faith, but with more obvious financial implications, arises with respect to the right of the United Nations to use roads, bridges, canals and other waters, port facilities and airfields without the payment of dues, tolls or charges, including wharfage charges.<sup>117</sup> The problem is compounded once again, by the inclusion of a caveat that the United Nations operation will not claim exemption for charges which are in fact charges for services rendered.<sup>118</sup>

In Croatia, UNPROFOR is paying road tolls. It is paying wharfage charges. It is paying charges in relation to airfields. And in relation, to bridges, it is most ironic that the UNPROFOR budget estimates<sup>119</sup> include, not the costs for use of the bridges, but the costs for restoration of bridges. Yet UNPROFOR is also paying for the use of certain bridges. As for the road tolls, the Croatian authorities simply decided, unilaterally, on one's notice, approximately one year ago, that henceforth UNPROFOR must pay road tolls. UNPROFOR complied. To my knowledge it is still paying.

In respect of airfields, the authorities in the FRY and in Croatia, both contend that since their main airports in Belgrade and Zagreb are *privately owned*, they, the respective Governments cannot exempt the United Nations from paying the charges associated with its use of these airports. By and large UNPROFOR pays. The use of airfields is another area which has caused a great deal of dissention in the UNPROFOR area of operations. UNPROFOR is held to the whim of the Transportation and Communications Ministry. In order to ensure strict compliance with all international aviation regulations, UNPROFOR must coordinate its flight operations with the Croatian air transport authorities. In practice, if something is not to their liking, be it disgruntlement with the manner in which a United Nations passenger behaved in the airport, to taking exemption to the crew

members of a particular UNPROFOR leased aircraft, to a perceived outstanding payment due from UNPROFOR to the Croatian authorities, they will simply refuse clearance for our aircraft to take-off. The FRY air transport authorities can be equally disagreeable. UNPROFOR never knows from one minute to the next, whether the local authorities are going to let them fly.

This is intolerable. As with the caveated provisions respecting exemption from taxes and customs and excise duties in the Convention, the necessity and appropriateness of the United Nations paying for any services in the territory of a host nation, for whose direct benefit the operation is in the territory in the first place, is seriously questioned. All such caveats should be removed in the New Convention and all provisions in respect of freedom of movement must be set out with painstaking clarity, to ensure to the extent possible that future operations, are not held to the ransom of the good or not so good will of the host authorities.

Paragraph 15 of the Model SOFA,<sup>120</sup> stipulates that the United Nations peace-keeping operation, as a subsidiary organ of the United Nations enjoys the status, privileges and immunities of the United Nations in accordance with the 1946 Convention. The relevant provisions of Article II of the 1946 Convention shall also apply to the property, funds and assets of the participating States.

In blatant disregard for this provision, and the relevant provisions of the 1946 Convention, Croatia has recently imposed taxes on petrol, oil, lubricants and aviation fuel, which she expects UNPROFOR to pay. UNPROFOR is paying. In its report to the General Assembly on the financing of UNPROFOR, the Advisory Committee on Administrative and Budgetary Questions advised:

[T]he cost estimate for petrol, oil and lubricants is \$26,541,100. The Advisory Committee was informed that the increase in the costs estimates for fuel was due in the main, to taxes being imposed on these items, including aviation fuel. The Committee was informed that UNPROFOR was paying the charges under protest. In this connection, the Committee believes that a status of forces agreement is essential for dealing with such matters and for preventing unnecessary levies on United Nations operations.<sup>121</sup>

The activities of the Croatian authorities are all that much more frustrating and infuriating when one considers once more the concept for UNPROFOR as advised by Mr. Vance and Mr. Goulding to the Secretary-General in which, the Croatian authorities should not only not be charging tax on such commodities, but in fact they should be providing them free of charge.<sup>122</sup>

This frustration is no less abated by the knowledge that the United Nations has acquiesced and is paying. I am sure the Croatia authorities have little concern for the fact that the payments in this regard and the road tolls, are being made under protest. The bottom line, is they are getting the money. This has to stop. Further, contrary to the opinion of the Advisory Committee on Administrative and Budgetary Questions, I do not believe a signed status of forces agreement would deter the Croatia authorities in any way. The United Nations is letting them get away with whatever they decide to try. The enforcement of the privileges and immunities of the United Nations must be entrenched in a New Convention to be signed by all Member States. In this way, their activities could be checked at the outset by their fellow Member States. This would also relieve some of the burden on the administrators of UNPROFOR who are often faced with the choice of paying or cease operations.

5. *Facilities*--Under Part V of the Model SOFA, the Government is required to provide *without cost* to the UN operation such areas for headquarters, camps or other premises as may be necessary for the conduct of the operational and administrative activities of the United Nations peace-keeping operation and for the accommodation of the members of the United Nations peace-keeping operation.<sup>123</sup> This section appears to be absolutely clear. Nevertheless, in UNPROFOR, this provision is perhaps honoured more in the breach than in the observance. Both



the host authorities and the United Nations are at fault. In Zagreb, for example, UNPROFOR has from the outset been paying all living accommodation costs for UNPROFOR military personnel, who are living in local hotels. The Croatian Government has never even made a pretence of finding suitable accommodation to be provided to UNPROFOR free of charge in accordance with its host nation obligation. Even with respect to office accommodation, they have been very is uncooperative: almost from the inception of the operation, UNPROFOR has been asking for additional accommodation. While military barracks, located less than five minutes walking distance from the present UNPROFOR headquarters has been empty throughout, and UNPROFOR has indicated willingness to make renovations at its own expense, the Croatian authorities have refused, without good reason to let UNPROFOR occupy those barracks. A strict enforcement mechanism in the New Convention would eliminate the opportunity for further abuse in this regard.

In addition, the Government of the host nation undertakes to assist the United Nations operation *as far as possible* in obtaining and making available, where applicable, water, electricity and other facilities *free of charge*, or, where this is not possible, at the most favourable rate.<sup>124</sup> Once again the Government is given the avenue for evading its host nation responsibilities. The old adage 'if you give them an inch they will take a mile' is most applicable here. The authorities hosting UNPROFOR provide very little free of charge and the UN is

doing very little to enforce its rights - it is paying the bills. An effective enforcement mechanism would alleviate the effects of the abuse on the coffers of the United Nations Organization.

6. *Status of the Members of the Operation*--The privileges and immunities provisions contained in Part VI of the Model SOFA parallel for the most part the provisions of Articles IV, V and VI of the Convention. However, it is noted once more that the privileges and immunities of the military personnel of national contingents assigned to the military component of the United Nations peace-keeping operation are provided for in the SOFA itself, and not by reference to the 1946 Convention.<sup>125</sup>

As has been previously stated, the need for these category distinctions is queried. With one exception, that of locally recruited personnel, it is considered that all individuals whose functions in the territory of the host nation have a direct nexus to and are on behalf of the UN Organization, should be accorded the maximum possible privileges and immunities. These privileges and immunities must be set out in detail and with clarity in the New Convention.

The UN peace-keeping operation is authorized to recruit locally such personnel as it requires.<sup>126</sup> If requested, the Government is to facilitate the recruitment of qualified local staff and to accelerate the process of such recruitment.<sup>127</sup> The

Model SOFA specifies that locally recruited members of the United Nations peace-keeping operation shall enjoy the immunities concerning official acts and exemption from taxation and national service obligations provided for in Section 18 of the 1946 Convention.<sup>128</sup>

What the status of locally recruited personnel should be is a difficult one to resolve. On the one hand, they are employees of the United Nations. On the other they are citizens and/or residents of the host nation. In the interest of protecting the integrity of their functions for the United Nations, it is imperative that they have at least functional immunity. Similarly, it is important for the purposes of the United Nations that the national service obligations of locally recruited personnel be waived or at least held in abeyance for the period of their employment with the Organization. But another side of the argument queries whether or not the United Nations should be interfering with the right of a nation to mount a military as it sees fit and to insist that all of its citizens participate in the conduct of the its defence. The taxation issue also raises questions. Is it right that a nation not be permitted to collect taxes from its citizens, particularly those actually resident in their home State? In fact, a number of Member States filed reservations on this point at the time of ratification of the Convention.<sup>129</sup> These points are simply raised here for consideration. The wisdom of amending current practices would be

within the purview of the Member States as they convene to consider the terms and conditions of a New Convention.

Whereas Article VII of the 1946 Convention contemplated that United Nations personnel would have to obtain visas where required by host nations, the Model SOFA has removed that requirement.<sup>130</sup> Unfortunately, this did not stop the host authorities both in the FRY and in Croatia from raising this matter on a regular basis. Particularly in the context of the FRY, it was a fact certain that if the Security Council passed a Resolution which was contrary to the interests of the FRY, the next day, UNPROFOR personnel would be expected to acquire visas before entering FRY territory.

"The Special Representative shall take all appropriate measures to ensure the maintenance of discipline and good order among members of the UN peace-keeping operation, as well as locally recruited personnel."<sup>131</sup> Military police are permitted and required to police the premises of the United Nations peace-keeping operation and such areas where its members are deployed; elsewhere they shall be employed only subject to arrangements with the Government and in liaison with it in so far as such employment is necessary to maintain discipline and order among members of the United Nations operation.<sup>132</sup> This latter restriction on the role of the military police of the United Nations operation is obviously designed to protect the

sovereignty and territorial jurisdiction of the host nation. However in practice, its efficacy is questioned. In Croatia, the local police authorities were most uncooperative. They maintained that *such areas where its members are deployed* means within the confines of UNPROFOR property only. Any policing outside the UNPROFOR premises was to be conducted by Croatian police. While they did not pursue this interpretation rigorously, had they done so, the Special Representative would have in essence been prevented from meeting his obligation to ensure the maintenance of discipline and good order on the part of UNPROFOR troops throughout the operation area.

To restrict the military police in this manner, is also contrary to the spirit and intent of the provisions of Part IV, paragraph 12, of the Model SOFA, which provides for the complete freedom of movement of the operation throughout the territory of the host nation. It is considered that the military police must have the same territory-wide jurisdiction to police the members of the operation. This is all the more so in light of the fact that military members, who in most United Nations peace-keeping operations comprise over 90% of the operation, are subject to the exclusive jurisdiction of their respective participating States in respective criminal offences which may be committed by them in the host territory.<sup>133</sup> As with all other items of the Model SOFA, this item too, is not operation specific. It is a principle which has application to all United Nations operations. The

needs of the United Nations could better be met if its application were tightened up and protected in an enhanced New Convention.

The concept of non-functional immunity for civilian members of the operation has been addressed at length in the context of the 1946 Convention. The Model SOFA fails to make adequate provision in this area as well. Again I recommend that this be rectified in a New Convention.

7. *Settlement of Disputes*--The 1946 Convention conferred on the United Nations, the legal capacity to contract, acquire and dispose of immovable and movable property and institute legal proceedings. The Member States have thus protected themselves collectively, as the Organization, while, but for the settlement of disputes provisions under Article VIII of the 1946 Convention, individual Member States and individual third parties are left with little or no immediate and effective recourse for the resolution of any such disputes as may arise in the conduct of business with the Organization. The United Nations Organization does not have juridical capacity to be sued. Disputes of a legal nature are either left to be determined by negotiation between an aggrieved citizen or national body corporate and the relevant host authority, or internally within the framework of the United Nations Organization in the forum of the claims procedure which was ultimately developed. Or, and probably as a last resort, the

matter may be referred to the International Court of Justice if it is a matter of interpretation or application of the 1946 Convention.<sup>134</sup> The Model SOFA makes no reference to the juridical personality of the Organization whatsoever.

The Model SOFA does provide greater detail as to the provisions made by the United Nations in the settlement of disputes.<sup>135</sup> But the consensus on the ground, even if erroneous, is that the United Nations procedures are heavily weighted in favour of the United Nations and against *the little guy*. The whole claims and disputes settlement mechanism is slow and time consuming. As previously discussed, it can lead to drastic and unfortunate circumstances in the field. A New Convention must address this area in depth. It must also set out in detail the workings of all dispute settlement procedures in order that all parties to the dispute shall be fully aware of their respective rights and obligations.

8. *Supplementary Arrangements*--In the same manner that the 1946 Convention provides for the conclusion of supplementary agreements by the Secretary-General with any Member or Members, the Model SOFA permits the Special Representative/Commander and the Government of the host nation to conclude supplemental arrangements.<sup>136</sup> It is conceded that it will, in all probability, not be possible to provide for every and all eventualities in the enhanced and all-encompassing New Convention. However, it cannot

be stressed too strongly that, restrictions must be placed on any supplemental arrangements concluded. They must not in any way be permitted to abrogate or derivate from the Charter and such convention, be it the 1946 Convention or the New Convention recommended in this thesis, as may be applicable. The Charter and the Convention must prevail. Any derivation must be deemed null and void.

The Model SOFA is a useful document as far as it goes. But as this thesis argues, it doesn't go far enough. The Charter guarantees to the United Nations all the privileges and immunities necessary for it to carry out its functions and purposes in the territory of Member States. The Member States, as host nations, must accord these privileges and immunities to the Organization. The Organization owes a duty to all Member States to enforce the privileges and immunities. The Model SOFA purports to assist both the host nation and the Organization in meeting their respective responsibilities. The United Nations operation in the former Yugoslavia (UNPROFOR) illustrates that the present scheme is not working.

#### IV. Solution

The United Nations is entitled to certain privileges and immunities while present in the territory of a Member State. The problem is: a number of host nations are failing to meet their



obligations to accord the Organization these privileges and immunities; while, at the same time, the United Nations Organization is failing to meet its obligation to the other Member States, to insist upon and enforce the privileges and immunities to which it is entitled. The immediate solution is for the United Nations Organization to undertake a more forceful approach to enforcing its rights. The longer term solution is for the Member States to negotiate a New Convention to replace the 1946 Convention.

As a first step towards enforcing its privileges and immunities, immediately, the United Nations must make it perfectly clear to all host nations that it will not tolerate abridgment of its rights. The host nation will accord the necessary privileges and immunities or the United Nations will refuse to deploy in the assistance of that host nation; if already deployed, it will repatriate immediately. There must be no latitude for discussion, such as that which is being accorded President Tudjman in Croatia today.

The United Nations is there to assist the host nation. It will decide what facilities, privileges and immunities it requires to carry out its purposes. The United Nations must tell the host nations what obligations it must meet, not the reverse. The host nation must meet, to the letter and beyond, both the spirit and intent of the Charter, the 1946 Convention, and the

Model SOFA. If discrepancies arise, they shall be resolved by the Organization, who shall have due regard for the interests of the host nation in reaching its decision. But under no circumstances, must the United Nations be treated like a puppet on a string, as would now appear to be the case in the former Yugoslavia.

Over the long term, steps must be taken to eventually rescind the Model SOFA and replace the 1946 Convention with a New Convention. The New Convention should parallel the existing one, but it must be far more encompassing.

The New Convention, like its predecessor must be premised on the fundamental provisions respecting the privileges and immunities of the United Nations as they are contained in the Charter. It must address the areas of concern highlighted in the provisions of both the 1946 Convention and the Model SOFA.

At the outset, the New Convention must indicate that it shall apply wherever a United Nations presence may be in the world, no matter whether the territory is under the control of a duly recognized government or under the control of unrecognized *de facto* authorities.

With respect to juridical personality, the Member States must determine whether or not they wish to continue with the

current concept that the Organization should be an entity which may sue, but which may not be sued. Coupled with this they must then decide whether or not the present scheme for the settlement of disputes is adequate in the circumstances. If they decide that it is not, then they must devise a settlement scheme which meets the needs of the Organization but at the same time respects the position of the individual claimants who may from time to time have need to have recourse to the process.

Under the New Convention, it must be made absolutely clear that the United Nations shall not pay any taxes, direct or indirect for whatever reason. Similarly, it must not pay for any services or facilities which the host nation can reasonably, in the opinion of the Organization, not the host nation, be expected to provide. Services for which the Organization may be required to pay, including accommodation and food, because the host nation cannot do so, shall be accounted for and reimbursed to the Organization, if appropriate, by the host nation at some time in the future. This applies to the area of communications services as well. All caveated provisions as they now appear in the 1946 Convention and the Model SOFA must be removed.

Freedom of movement, and the inviolability and immunity of the property, funds and assets of the United Nations must be enshrined in the New Convention. Convoys, large or small shall not be subject to being stopped, searched or subjected to

interference of any form. This and other pertinent details in this respect must be clearly stated in the New Convention.

In the New Convention, consideration should be given to removing the distinctions between the various categories of personnel. There should be a distinctive category of status for international United Nations personnel which does not require analogy to the status of diplomatic envoys and or missions. United Nations personnel should include all persons, military and civilian, who are required to be in the territory of a Member State in relation to United Nations official business. This is so whether that official United Nations business is in relation to duties as a representative of a Member State or of the United Nations Organization. The only separate category of personnel would be that of locally recruited personnel. They should have, as is now the case, functional immunity. Whether or not they should be exempt from taxes and national service obligations in their home State is a matter which requires further discussion by the Member States in light of the number of reservations filed in relation to the former at the time of ratification of the 1946 Convention.

In addition to the privileges and immunities already provided to international United Nations personnel, consideration should be given to making the immunity from legal process applicable in respect of non-functional matters as well. This

would in turn necessitate the creation of an appropriate judicial system competent to ensure prosecution of offences where prosecution is appropriate, but should not take place in the territory and under the jurisdiction of the host nation.

If, in the wisdom, of the Member States, it is decided that provision should be made for supplementary agreements or arrangements, it must be specifically stated that under no circumstances may such supplementary agreements or arrangements be in conflict with or derivate from the terms and conditions of the Charter of the United Nations or the Convention under which they are concluded.

Finally, but of utmost importance, the New Convention must, first, specify that ratification of the New Convention must be without reservation, and second, it must contain an extensive enforcement mechanism to apply in circumstances where host nations attempt to renege on their obligations, notwithstanding their commitment to the New Convention or the acceptance of a United Nations operation in their territory, as the case may be. This enforcement mechanism could range from additional financial assessments against the host nation, on the low end of the scale to sanctions, or even use of force, if appropriate, in accordance with Article 42 of the Charter, on the extreme far end of the scale.

## V. Conclusion

The United Nations Organization, representatives of Member States and officials of the Organization enjoy a special status in the territory of each of the Member States of the Organization. This special status entitles them to be accorded certain privileges and immunities in order to permit them to exercise their functions and the purposes of the United Nations while in the territory of the Member State. Host Nations are failing in their obligation to accord the appropriate privileges and immunities to the Organization. The Organization is failing to meet its obligation to assert its privileges and immunities. It is now essential that the Member States meet to determine the needs of their Organization and to enshrine those needs as well as the manner in which they shall be enforced in a New Convention.

1. For the twenty-month period, October 1992 to June 1994, I was the Senior Legal Adviser to the United Nations Protection Force in the former Yugoslavia (UNPROFOR). My duties and responsibilities involved the provision of legal advice to the Special Representative of the Secretary-General, the Force Commander and their staffs on all matters of a legal nature pertaining to the operation. Specifically on the political level, I participated in the status-of-forces negotiations with the respective parties involved in the operation. On the political and administrative level, I was involved daily with matters pertaining to the privileges and immunities of the United Nations as they are provided for in the Charter of the United Nations, the 1946 Convention on the Privileges and Immunities of the United Nations, and the Model Status of Forces Agreement. This thesis is based upon my experiences.

2. *An Agenda for Peace, Preventive Diplomacy, Peacemaking and Peace-keeping: Report of the Secretary-General pursuant to the statement adopted by the Summit Meeting of the Security Council on 31 January 1992, at 1, U.N. Doc. A/47/277-S/24111, U.N. Sales No. A6/X70714 (1992) [hereinafter An Agenda for Peace].*

3. The United Nations publication, *The Blue Helmets*, provides a good overview of the United Nations concept of peace-keeping as well as a comprehensive account of the peace-keeping operations

of the United Nations from their inception in 1948 up to June 1990. Peace-keeping *per se* is described as follows:

As the United Nations practice has evolved over the years, a peace-keeping operation has come to be defined as an operation involving military personnel, but without enforcement powers, undertaken by the United Nations to help maintain or restore international peace and security in areas of conflict. These operations are voluntary and are based on consent and co-operation. While they involve the use of military personnel, they achieve their objectives not by force of arms, thus contrasting them with the "enforcement Action" of the United Nations under Article 42.

THE BLUE HELMETS, A REVIEW OF UNITED NATIONS PEACE-KEEPING 4-5, U.N. Sales No. E.90.I.18 [hereinafter THE BLUE HELMETS] (2d ed. 1990).

4. THE CHARTER OF THE UNITED NATIONS [hereinafter U.N. CHARTER].

5. Convention on the Privileges and Immunities of the United Nations, Feb. 13, 1946, 21 U.S.T. 1418, 1 U.N.T.S. 15 and 90 U.N.T.S. 327 (corrigendum to vol. 1) [hereinafter 1946 Convention].



6. The mandate of a multinational force tasked to carry out a United Nations operation is contained in the relevant resolutions adopted by the United Nations Security Council for that operation. The mandate is a statement of the specific task or tasks and purposes for which a United Nations force is deployed to the territory of a Member State or other authority. As an example, the original mandate of the United Nations operation in the former Yugoslavia (UNPROFOR) is contained in Security Council Resolution 743 of 21 February 1992 which by reference adopts the *Report of the Secretary-General pursuant to Security Council Resolution 721* which provides the following basic concept for UNPROFOR's mandate:

United Nations troops and police monitors would be deployed in certain areas in Croatia, designated as "United Nations Protected Areas". These areas would be demilitarized; all armed forces in them would be either withdrawn or disbanded. The role of the United Nations troops would be to ensure that the areas remained demilitarized and that all persons residing in them were protected from fear of armed attack. The role of the United Nations police monitors would be to ensure that the local police forces carried out their duties without discriminating against persons of any nationality or abusing anyone's human rights. As the United Nations assumed its responsibilities in the

United Nations Protected Areas (UNPAs), all JNA forces deployed elsewhere in Croatia would be relocated outside that republic. The United Nations would also, as appropriate, assist the humanitarian agencies of the United Nations in the return of all displaced persons who so desired to their homes in the UNPAs.

S.C. Res. 743, U.N. SCOR, 47th Sess., U.N. Doc. S/RES/743 (1992).

Since that time, UNPROFOR's mandate has been extended and amended many times and it now operates in the Republic of Bosnia and Herzegovina (BH) and the former Yugoslav Republic of Macedonia (FYROM) in relation to completely separate taskings. For a good summary of the mandate changes see UNITED NATIONS DEPARTMENT OF PUBLIC INFORMATION, UNITED NATIONS PEACE-KEEPING OPERATIONS INFORMATION NOTES, U.N. Doc. DPI/1306/Rev.2 (1993).

In relation to its mandate in Croatia, as recently as 31 March 1995, the United Nations Security Council adopted three separate resolutions which changed the name of the operation in Croatia and substantially revised the mandate such that the force shall assist in "controlling, by monitoring and reporting, the crossing of military personnel, equipment, supplies and weapons" at border points. Anthony Goodman, *U.N. Council Votes New Mandate for Balkan Peacekeeping Forces*, WASH. POST, Apr. 1, 1995, at A18.

7. JOHN NORTON MOORE ET AL., NATIONAL SECURITY LAW 241 (1990).

8. *Comprehensive Review of the Whole Question of Peace-keeping Operations in all Their Aspects*, G.A. Res. 44, U.N. GAOR, 44th Sess., 78th plen. mtg., U.N. Doc. A/Res/44/49 (1989).

9. *Comprehensive Review of the Whole Question of Peace-keeping Operations in all Their Aspects, Model status-of-forces agreement for peace-keeping operations: Report of the Secretary General*, U.N. GAOR, 45th Sess., Agenda Item 76, U.N. Doc A/45/594 (1990) [hereinafter *Model SOFA*].

10. *Id.* at 1.

11. *Id.*

12. *Id.*

13. *Id.* at 2-3, n.d.

14. *Id.* at 2, n.c.

15. Such action is often referred to as "enforcement" action.

16. *Model SOFA, supra* note 9, at 1.

17. This would arise, for example, when the United Nations is deployed in a situation where one or other of the parties to a conflict does not enjoy internationally recognized status as a nation state. The United Nations would deal with the person or persons who are in actual, that is to say *de facto*, control to enforce its privileges and immunities.

18. *An Agenda for Peace, supra* note 2, at 41.

19. *Id.* at 28.

20. *Report on the Work of the Organization from the Forty-seventh to the Forty-eighth Session of the General Assembly: Report of the Secretary-General, U.N. Office of Conference Services, Department of Administration and Management, at 33-34, U.N. Doc. DPI/1420 (1993).*

21. *Building Peace and Development. Report on the Work of the Organization from the Forty-eighth to the Forty-ninth Session of the General Assembly: Report of the Secretary-General, U.N. Office of Conference Services, Department of Administration and Management, at 35, U.N. Doc. DPI/1537, U.N. Sales No. E.95.I.3 (1994).*

22. U.N. CHARTER art. 4, ¶ 1.

23. *Id.* art. 2, ¶ 2.

24. *Id.* at ¶ 5.

25. Member States are assessed contributions on a scale specified by the General Assembly on the recommendations of the 18-member Committee on Contributions. "The fundamental criterion on which the scale of assessments is based is the real capacity of Member States to pay." U.N. DEP'T OF PUB. INFO., BASIC FACTS ABOUT THE UNITED NATIONS at 22, U.N. Doc. DPI/1224-93.21428, U.N. Sales No. E.93.I.2 (1992).

The contribution assessments for United Nations peace-keeping operations for the FRY, Croatia, BH and FYROM are 0.028%, 0.026%, 0.008% and 0.004% respectively. Interview with Mr. Sam Hanson, Counsellor, Permanent Mission of Canada to the United Nations, Canadian Representative to the United Nations 5th (Financial) Committee, 22 Mar. 1995.

26. *Report of the Secretary-General Pursuant to Security Council Resolution 721 (1991)*, U.N. SCOR, Annex III, at 16, U.N. Doc. S/23280 (1991).

27. As at 30 June 1994, the only signed SOFA was that between the United Nations and the Republic of Bosnia and Herzegovina.

28. The Government of The Former Yugoslav Republic of Macedonia has now executed a SOFA by means of an exchange of letters between its Government and the United Nations. Interview with Ms. Leila Benkirane, Legal Officer, United Nations Office of Legal Affairs, January 13, 1995.

29. *Financing of the United Nations Protection Force: Report of the Secretary-General*, U.N. GAOR, 49th Sess., Agenda Item 122, at 9, U.N. Doc. A/49/540 (1994).

30. *Id.* at 10.

31. *Id.* at Annex III.

32. *Status of Contributions as at 31 December 1994*, U.N. Sec., 2444th plen. mtg., U.N. Doc. St/ADM/Ser.B/458 (1995).

33. Most of the definitions provided are comprised of extracts from American case law.

34. BLACK'S LAW DICTIONARY 1359 (4th ed. Rev. 1968).

35. *Id.* at 885.

36. THE BLUE HELMETS, *supra* note 3, at 408.

37. U.N. CHARTER art. 104.

38. *Id.* art. 105, ¶ 1 - 2.

39. *Id.* art. 9.

40. 1946 Convention, *supra* note 5.

41. *Multilateral Treaties Deposited With the Secretary-General, Status as at 31 December 1992*, at 35, U.N. Doc. ST/LEG/SER.E/11, U.N. Sales No.E.93.V.11 (1993).

42. Consider for example the United Nations Convention on the Law of the Sea which in its final format comprises 320 articles, plus 9 Annexes which are themselves comprised of some 126 articles, and four related resolutions. See THE LAW OF THE SEA. UNITED NATIONS CONVENTION ON THE LAW OF THE SEA WITH INDEX AND FINAL ACT OF THE THIRD UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA, U.N. Doc. A/CONF.62/122 (1982), U.N. Sales No. E.83.V.5 (1983).

43. 1946 Convention, *supra* note 5, art. I, ¶ 1.

44. *Id.* art. II, ¶ 2.

45. *Id.* at ¶ 3.

46. *Id.*

47. *Id.* at ¶ 7.

48. U.N. CHARTER art. 42.

49. *Id.* art. 2, ¶ 1.

50. JOHN NORTON MOORE ET AL., *supra* note 7, at 249 (1990).

51. *See supra* note 6.

52. *See supra* notes 31 and 32.

53. 1946 Convention, *supra* note 5, art II, ¶ 7.

54. *Id.* at ¶ 8.

55. *Id.*

56. In the event that abuse is determined to have occurred in



this regard, the United Nations staff disciplinary system is the appropriate forum for action.

57. 1946 Convention, *supra* note 5, art. III, ¶ 9.

58. *Id.*

59. *Id.* at ¶ 10.

60. There is no specific mention of military personnel in the 1946 Convention. Arguably, military personnel are both representatives of their respective Member States and officials of the UN when they are placed under the command and control of the UN for the operations to which they are assigned.

Nevertheless, as will be seen in the Model SOFA, they are placed in a separate category of their own as *members of the force* and are to be accorded the privileges and immunities set out in that document.

61. U.N. CHARTER art. 105, ¶ 2.

62. *See supra* note 34, at 1359.

63. 1946 Convention, *supra* note 5, art. IV, ¶ 11(a).

64. *Id.* art. V, ¶ 18(a).

65. *Id.* art. VI, ¶ 22(b).

66. SERGE LAZAREFF, STATUS OF MILITARY FORCES UNDER CURRENT INTERNATIONAL LAW 7 (1971) quoting *Rousseau, Droit International Public*, ed. 1953, no. 250.

67. 1946 Convention, *supra* note 5, art. IV, ¶ 11(a) and art. VI, ¶ 22(a).

68. *Id.* art. IV, ¶ 11(b) and art. VI, ¶ 22(c).

69. *Id.* art. IV, ¶ 11(c) and art. VI, ¶ 22(d).

70. *Id.* art. IV, ¶ 11(e) and art. VI, ¶ 22(c).

71. *Id.* art. IV, ¶ 11(f) and art. VI, ¶ 22(f).

72. *Id.* art. IV, ¶ 11(d).

73. *Id.* at ¶ 11(g).

74. *Id.* art. V, ¶ 18(c).

75. *Id.* at ¶ 18(d).

76. *Id.* at ¶ 18(e).

77. *Id.* at ¶ 18(b). Note however, a number of nations submitted reservations on this provision at the time of ratification.

Canada for example reserved: "With the reservation that exemption from taxation imposed by any law in Canada on salaries and emoluments shall not extend to a Canadian citizen residing or ordinarily resident in Canada." See *supra* note 41 at 36.

78. 1946 Convention, *supra* note 5, art. V, ¶ 18(f).

79. *Id.* at ¶ 18(g).

80. *Id.* at ¶ 19.

81. *Id.* art. IV, ¶ 14, art. V, ¶ 20, art. VI, ¶ 23.

82. *Id.* at ¶ 14.

83. *Id.* art. V, ¶ 20 and art. VI, ¶ 23.

84. *Id.* art. IV, ¶ 14, art. V, ¶ 20, and art. VI, ¶ 23.

85. *Id.* art. V, ¶ 21.
86. *Id.* art. VII, ¶ 24 and 25.
87. *Id.* at ¶ 25.
88. *Id.* at ¶ 26.
89. *Id.* art. VIII, ¶ 29(a).
90. *Id.* at ¶ 29(b).
91. *See supra* note 41 at 36-37.
92. United Nations Convention on the Law of the Sea, Dec. 10, 1982, 21 I.L.M. 1261-1354 (1982), U.N. Doc. A/CONF.62/122, U.N. Sales No. E.83.V.5 (1983).
93. 1946 Convention, *supra* note 5, Final Article, ¶ 36.
94. THE RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 18 (1973).
95. Exchange of letters constituting an agreement concerning the status of the United Nations Emergency Force in Egypt, Feb. 8, 1957, UN-Egypt, 260 U.N.T.S. 61.

96. See, e.g., Exchange of letters constituting an agreement concerning the status of the United Nations Peace-keeping Force in Cyprus, Mar. 31, 1964, U.N.-Cyprus, 492 U.N.T.S. 57.

97. *Model SOFA*, *supra* note 9, at 2, n.a.

98. *Id.* at n.c.

99. S.C.Res. 743, U.N. SCOR, 47th Sess., U.N. Doc. S/RES/743 (1992).

100. See, e.g., the resolutions which sought to enhance or more strenuously enforce the sanctions imposed upon the FRY by virtue of Security Council Resolution 757: S.C. Res. 757, U.N. SCOR, 47th Sess., U.N. Doc. S/RES/757 (1992); S.C. Res. 787, U.N. SCOR, 47th Sess., U.N. Doc. S/RES/787 (1992); and S.C. Res. 820, U.N. SCOR, 48th Sess., U.N. Doc. S/RES/820 (1993).

101. See, e.g., Security Council Resolution 802 which condemned the Croatian attack on the UNPAs of 22 January 1993. S.C. Res. 802, U.N. SCOR, 48th Sess., U.N. Doc. S/RES/814 (1993).

102. *Model SOFA*, *supra* note 9, at 2, ¶ 3.

103. As a general rule, the basic privileges and immunities of a United Nations peace-keeping operation consist of

provisions that flow from the Convention on the Privileges and Immunities of the United Nations adopted by the General Assembly on 13 February 1946. However, while the Convention is in force with respect to 124 Member States, there are a number of States that are not a party to it and there may also be United Nations operations involving relations with entities other than States. Thus, in such cases, the Status Agreement itself must provide specifically for the application of the Convention.

*Model SOFA, supra note 9, at 2-3, n.d.*

104. In practice a United Nations operation can be headed by a either a civilian or a military officer. If the Head of Mission is a civilian, the position usually bears the title of Special Representative of the Secretary-General, or Special Representative. If the Head of Mission is a military officer, the position would bear the title of Commander. In many situations, there will be both a Special Representative, who will be the overall Head of Mission, and a Commander who will be the senior military Commander of the operation. In such situations the Commander reports to the Security Council through the Special Representative. If there is no Special Representative, the Commander would be the Head of Mission and would report directly to the Secretary-General.

UNPROFOR experienced both situations. At its birth, in February 1992, the operation was commanded by Indian, Lieutenant-General Satish Nambiar as both the Force Commander and the Head of Mission. This changed in the Spring of 1993 when the Secretary-General appointed Mr. Thorvald Stoltenberg, a Norwegian, as his Special Representative in the former Yugoslavia. Mr. Stoltenberg then took over the reigns as the Head of Mission from the then Force Commander, Swedish Lieutenant-General Lars Whalgren. The operation is still headed by a civilian, Special Representative to the Secretary-General, Mr. Yashushi Akashi.

105. *Model SOFA*, *supra* note 9, at 3, ¶ 4.

106. *Id.* at ¶ 5.

107. Most notable in this regard is the absolute immunity from legal process in relation to criminal acts committed by military members of the UN peace-keeping force. *See, e.g., Model SOFA*, *supra* note 9, at 12, ¶ 47(b).

108. *Model SOFA*, *supra* note 9, at 3, ¶ 6.

109. *Id.* at ¶ 7.

110. *Id.* at ¶ 8.

111. *Id.* at ¶ 9.

112. *Id.* at 4, ¶ 10.

113. *Id.* at ¶ 11(a) and (b).

114. 1946 Convention, *supra* note 5, art. III, ¶ 9.

115. *Model SOFA*, *supra* note 9, at 5, ¶ 12.

116. *Id.*

117. *Id.* at ¶ 14.

118. *Id.*

119. *See Supra* note 31.

120. *Model SOFA*, *supra* note 9, at 5, ¶ 15.

121. *Financing of the United Nations Protection Force: Report of the Advisory Committee on Administrative and Budgetary Questions*, U.N. GAOR, 49th Sess., Agenda Item 122, at 13, U.N. Doc. A/49/753.



122. *See supra* note 26.

123. *Model SOFA, supra* note 9, at 6, ¶ 16.

124. *Id.* at 6-7, ¶ 17.

125. *Id.* at 8, ¶ 27.

126. *Id.* at 7, ¶ 22.

127. *Id.*

128. *Id.* at 8, ¶ 28.

129. *See supra* note 41 at 36-39.

130. *Model SOFA, supra* note 9, at 9, ¶ 33 and 34.

131. *Model SOFA, supra* note 9, at 10, ¶ 40.

132. *Id.*

133. *Id.* at 12, ¶ 47(b).

134. 1946 Convention, *supra* note 5, art. VIII, ¶ 30.

135. *Model SOFA*, *supra* note 9, at 13, ¶ 51 and 52.

136. *Id.* at 14, ¶ 55.